162 US 399

RECORD, CASE No. 15,218.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1892.

TERM No., ~~1248~~. ~~857~~ 483 194

WILLIAM H. PALMER AND ADOLPH M. DROSTE, PLAINTIFFS IN ERROR,

vs.

MARY H. BARRETT.

IN ERROR TO THE CITY COURT OF BROOKLYN, NEW YORK.

FILED DECEMBER 1, 1892.

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a Court of Appeals of the State of New York.

On appeal from the city court of Brooklyn.

MARY H. BARRETT, Plaintiff and Respondent,
against
WILLIAM H. PALMER and ADOLPH M. DROSTE, Defendants and Appellants.

Appeal Book.

Messrs. Hirsh & Rasquin, attorneys for plaintiff and respondent, 4 and 5 Court square, Brooklyn, N. Y.; Henry C. De Witt, Esq., attorney for defendant and appellant Palmer, 205 Broadway, New York city; Mirabeau L. Towns, Esq., attorney for defendant and appellant Droste, 375–379 Fulton street, Brooklyn, N. Y.

1 City Court of Brooklyn.

MARY H. BARRETT, Plaintiff and Respondent,
against
WILLIAM H. PALMER and ADOLPH M. DROSTE, Defendants and Appellants.

Statement.

Summons and complaint served on Jan. 31, 1890.

Answer of defendant Droste served April 4th, 1890.

Defendant Palmer's answer amended during pendency of second trial.

No change of parties has taken place pending the suit.

Appearances: Messrs. Hirsh & Rasquin, for plaintiff; Mirabeau L. Towns, Esq., for defendant Droste; Henry C. DeWitt, Esq., for defendant Palmer.

2 City Court of Brooklyn.

MARY H. BARRETT, Plaintiff,
against
WILLIAM H. PALMER and ADOLPH M. DROSTE, Defendants. } Summons.

To the above-named defendants:

You are hereby summoned to answer the complaint in this action and to serve a copy of your answer on the plaintiff's attorneys within twenty days after the service of this summons, exclusive of the day of service, and in case of your failure to appear or answer judgment will be taken against you by default for the relief demanded in the complaint.

Dated Brooklyn, January 27th, 1890.

HIRSH & RASQUIN,
Plaintiff's Attorneys; Office and Post-Office Address, No. 16 Court Street, Brooklyn, N. Y.

3 City Court of Brooklyn.

MARY H. BARRETT
against
WILLIAM H. PALMER and ADOLPH M. DROSTE.

The complaint of the plaintiff respectfully shows to this court:

I. That on or about the 25th day of April, 1889, the plaintiff was in lawful possession and tenant of the following-described premises, viz., two certain stands in the Wallabout market, known as Nos. three and five, on South street, between Washington and West avenues.

II. That on or about said day, without warrant or authority of any process of law and in violation of law and the plaintiff's rights, the defendants, unlawfully conspiring against the plaintiff, forcibly broke and entered upon said premises and committed trespass upon the same against the plaintiff's protest, and violently and forcibly took possession of said premises and forcibly detained the same from this plaintiff, and, with the aid and co-operation of laborers acting under and by their order and authority, carried off and converted to their own use certain fixtures, &c., which belonged to plaintiff and which were used by her and her tenants in the butchering business on said premises and were of the value of two hundred dollars.

III. That by reason of the foregoing facts the plaintiff was disseized and deprived of the possession, use, and occupancy of the said premises, and was exposed to indignity, disgrace, and
4 mortification, and was disturbed, endangered, and damaged in her said business and in the further conduct and continuance of the same.

IV. That by reason of the foregoing facts the defendants, by the force of section 1669 of the Code of Civil Procedure and of other laws and statutes of this State, forfeited and became liable to the plaintiff in treble the amount of the damage sustained as aforesaid, as well as exemplary damages.

Wherefore the plaintiff demands judgment against the defendants for ten thousand dollars damages and treble damages as aforesaid, besides the costs of this action.

HIRSH & RASQUIN,
Plaintiff's Attorneys; Office & P. O. Address,
16 *Court Street, Brooklyn, N. Y.*

Verification.

5 City Court of Brooklyn.

MARY H. BARRETT
against
WILLIAM H. PALMER and ADOLPH M. DROSTE.
Amended Answer of Def't Palmer.

The amended answer of defendant William H. Palmer to plaintiff's complaint herein shows to this honorable court and—

1. Denies all the allegations of plaintiff's complaint.

Wherefore said defendant demands that the plaintiff's complaint be dismissed with costs.

HENRY C. DE WITT,
Attorney for Defendant Wm. H. Palmer.

Verification.
(Amended by court to conform to proof.)

The City Court of Brooklyn.

MARY H. BARRETT
against
ADOLPH M. DROSTE and WILLIAM H. PALMER. } Amended Answer of Def't Droste.

Now comes the defendant Droste into court and for his own defence to the allegations of plaintiff alleges by his amended answer:

6 He denies each and every allegation in said complaint contained.

And for a further and separate answer and by way of defence this defendant Droste alleges that at or about the time mentioned in plaintiff's complaint the defendant William H. Palmer was in possession of the premises described in the complaint by virtue of a lease made to him by the city of Brooklyn, and that said William H. Palmer was the owner of the buildings upon the premises mentioned in the plaintiff's complaint.

That about said time this defendant purchased from said William H. Palmer said premises and the lease of said premises for the unexpired term.

That at the time of said purchase the plaintiff was not in possession of said premises, nor were the same occupied by any one; that the said Palmer, on or about the day mentioned in plaintiff's complaint, put this defendant in possession of said premises peaceably and without force.

That the said premises at said time were untenanted, uninhabited, deserted, and unoccupied by any one save said Palmer.

Defendant further alleges that he lawfully entered said premises peaceably and without force.

Wherefore said defendant Droste demands that the complaint of the plaintiff be dismissed with costs.

M. L. TOWNS,
Att'y for Def't Droste; Office and P. O. Address,
16 *Court Street, Brooklyn, N. Y.*

Verification.

7 City Court of Brooklyn.

MARY H. BARRETT
against
WILLIAM H. PALMER and ADOLPH M. DROSTE.

Before Hon. Nathaniel H. Clement, chief justice, and a jury.

This case having been called for trial and a jury impanelled and sworn on the ninth day of December, 1890, the following testimony was taken:

JOHN BARRETT, witness for plaintiff, examined by Mr. HIRSH:

I am a wholesale butcher and father of plaintiff. (Paper shown witness.) I executed that for the plaintiff and saw Quigley sign as witness to that lease.

Paper offered in evidence.

Mr. Towns objects as immaterial, irrelevant, and incompetent. Objection overruled. Exception.

Mr. De Witt objects the lease is not pleaded. Overruled. Exception.

Lease marked Plaintiff's Exhibit 1.

I then took this lease to plaintiff and I went to the market about April 24th or 25th and I saw the stands with workmen on them; immediately after this lease I had butcher's fixtures, rails, wrought-iron hooks, and spikes put in and arranged for three stands. I rented two of these stands; one to Ryder for four weeks only for $32, the other one the same, and reserved the third for myself.

About April 25th, 1889, I went to these stands and saw carpenters working there; the butcher's fixtures had been taken away;
8 they were sawing and driving nails; about a half hour later, with John Tierney, I saw Mr. Droste in the second next gangway of the Wallabout market. Said I, "By whose authority have you taken possession of those stands around the corner?" He said, "By permission of the owner, Mr. Palmer." Said I, "Did you not know they were leased for two years and the rent paid in advance up to the 1st of July?" "Yes, I heard so." "Well, then," said I, "I think you have got yourself into a nice fix. "Well," said he, "if you think so, go ahead; I am good enough."

Then I came down to see you (Mr. Hirsh); not the same day, but later, I went with Mr. Hinck to see Mr. Palmer at his theatre in Grand street. I said, "I come to know by what authority"——

Mr. Towns objects as not binding Mr. Droste.

The COURT: It is only binding upon Mr. Palmer. I admit it.

(Witness continues:) "Did you give Mr. Droste possession of those stands knowing I had a lease on them for two years and rent paid in advance up to July next?" He said, "I don't deny you gave me $50, but I had to do something to protect myself."

Then I said, "I think you have got yourself in a nice fix." "Well," he said, "I presume you know what to do. You can go ahead. I am good enough." I paid $50 rent in all to Mr. Quigley for Mr. Palmer.

I think I know the value of those stands now. Droste is still in possession. I do not know what I paid out for lumber and nails. I never kept an account; could not swear to anything I paid out; don't recollect any amount of money at any one time paid.

I got money from my daughter and bought lumber for $60 or $70; don't know exacty how much; bought 350 iron hooks
9 at one time and paid for 150 more afterward; hooks cost about $15 for the 500; also bought 75 pounds white lead; don't recollect what it cost; bought 5 posts at $1 apiece, and paid out $25 or $30 for labor. I did not work on them; I superintended for two or three days. From amount of lumber bought, hooks, I now know the value of these stands when finished were $200 and more.

Cross-examination:

I bought the lumber for three stands. I fixed up three stands 13¼ feet each in width and 20 or 25 feet long; don't know which; that is as near as I can come now. I don't know how wide they were; will swear they were 10 feet. I think they were 15; I don't know. I will swear they were divided up into three butcher's stalls. I put up then lumber and hooks; the lumber was second handed; used it for beams to hang meat on; put about 25 or 26 of these second-hand beams in these three stands. These were uprights and supports; about twenty beams, I think. They ran lengthwise and crosswise; about seven to each stall. I suppose about 260 feet in each one or 780 feet. If stalls were 15 feet wide, it would be 300 feet instead of 260; don't know what I paid for this lumber; don't remember; don't know the price of second-hand lumber; it is according to the quality; don't know how wide and thick these beams were. I saw them. They might be 2½ by 9 or 10; don't know how many uprights nor how many feet. There must have been 20 or 25 of the dimensions of the stand, which was 13 x 20; 20 uprights 13 feet in width. The uprights were 13 feet long. That is 260 feet for each stand. I mean to say I put in 20 uprights in a butcher's stand 13 feet by 20. These were uprights to support the beams; likewise on top to keep them solid—prevent shifting with the weight of heavy quarters of beef and butchers' careless hanging.

10 I put more than 20 uprights in the whole place; my opinion is that there were 20 uprights and girders in each stall—about 20 uprights in the whole.

Don't know what I paid for them; bought them at 9th avenue and 14th street. I put in five yellow pine posts. I think four or five. I don't remember which; might be four. They were about seven feet high, I think, not 12 feet; don't know whether they were 12 x 12 inches. I paid a dollar apiece for them.

(Paper shown witness.) Four posts. I don't know about that—

whether four yellow-pine posts, 20 uprights, and 300 feet of beam rails were all the lumber I put into those stands; don't know whether the carpenter got any more. I did not buy more; don't know whether I paid for more. I bought 350 wrought-iron hooks, I think, at 3 cents apiece, $10.50, and put 3 spikes in each hook. That would make 1,050; don't know what I paid for spikes. I could not tell how much money I paid out or how much I paid for 1,050 spikes; don't know whether I paid one cent apiece or anything for them. Spikes and hooks bought at the same time; how I don't remember, but recollect distinctly the price of hooks was 3 cents each.

GEORGE H. HINCK, witness for plaintiff.

Direct:

I reside at 697 Gates avenue, and place of business is 749 Gates avenue; am a butcher; know John Barrett, father of plaintiff, and Mr. Palmer, one of the defendants, by sight.

I was in company with Mr. Barrett at a theatre in Grand street, Williamsburgh, some time in the midst of last winter, when he had a conversation with Mr. Palmer. There were present at the conversation Mr. Barrett, Mr. Palmer, and myself. Mr. Barrett asked Mr. Palmer by what authority he occupied those stands, and he responded that the building was all dilapidated and going to decay, and that in doing as he did he was justified. He said he has received $50 rent from Barrett.

11 Barrett said something about why Mr. Palmer had destroyed Barrett's property there. I don't know exactly what. In reply Mr. Palmer said he was justified in doing as he did, and that the courts would sustain him. About suing, Mr. Palmer said to Barrett, Well, he could go to work and do the best he would; do not remember that anything was said about Droste in that conversation or Barrett's saying anything about a two years' lease. The words I said first off is all I know. I kept those to heart.

JOHN BARRETT recalled.

Cross-examination continued:

Neither myself nor my daughter ever had a store or carried on business in those premises; she was never there to my knowledge. I have been there; it was in the month of March, about the 18th or 20th, I think; I was looking on to see how the market was; that was not the only time; I was there in the month of February before the stands were constructed; it was about the middle of the month; the stands had not then been finished or begun.

Did not keep any book about this matter or make any entry of what I received or spent about the premises, because I did not have to render any account to my daughter.

Believe Ryder Bros. rented one stand and John Healy, wholesale butcher, another; never saw Healy go in the stands, but heard he

did so; Ryder paid me $32—four weeks' rent. Healy never paid anything nor signed any paper.

Don't know that I ever saw Ryder there; don't know, of my own knowledge, that he entered the stand. I went there in February, and in March saw Ryder, who paid me $32; I think in March, a year ago last March; not in the latter part, but some time in the fore part. He was the first man who ever rented them; from 1st of February to latter part of March they were not rented; don't
12 know what day in March he paid; made no note or memorandum; know it was in March, because he paid before he occupied them. I never saw him there. I saw these people after the latter part of March; Healy almost daily in the Bull's Head. He was a wholesale butcher, same as I am; never saw either of them there on those premises. I did not tear down the front of this building; the men employed did.

Redirect:

It was understood that in order to construct these stands like those in Washington market that 40 feet of the front of the wooden building on South street, in Wallabout market, should be torn down.

I told Mr. Palmer before the lease was executed that I would construct those stands like those in Washington market, and presume he knew how that was, and he said, "Yes; I am an old rounder; I dealt in meat for several years and know just exactly how those stands are constructed in Washington market." Said I, "So be I, going there for over 30 or 35 years;" thereupon had them so constructed. That is the way all the stands in Washington market are constructed for the wholesale butchering business. It was simply a wooden building and the front of it consisted of common hemlock boards.

MARY BARRETT, plaintiff.

Direct:

I am plaintiff; last witness my father, whom I directed with reference to leasing of Mr. Palmer in my behalf, after which I gave him money to erect stands; don't know what money was expended except what my father told me.

Cross-examination:

I never was in Wallabout market nor in the butcher business not especially interested in real-estate; have no real-estate
13 office. I speculated in those stands; am in no business; saw the lease at home before I saw it in court; don't remember first time, but when it was brought home I read it; never saw it before it was signed by my father. I never saw those stands; gave my father money. I took it out of the bank, some of it. My father does not carry on business in my name; never asked him for an accounting. He told me what he was going to do with the money.

My father received no money from these premises, but four weeks' rent, which he gave me; never heard of the Wallabout market until we concluded to take the place, when my father told me about it and a conversation he had with Quigley; never bought nor leased any place before; rented the house we live in, not in my own name, my mother's. My father acted for me in no other transactions; I don't know whether he is in business. He does not carry on business now in my name; when in business it was not in my name, but in his own; don't know, but heard he had failed; this business was to be mine.

JOHN TIERNEY, witness for plaintiff.

Direct:

I am a laborer and live at 226 Tillery street; remember last year having a conversation with defendant Droste in company with Barrett at Wallabout market, I think in spring of last year, don't know the month, at Droste's stand. Barrett asked by what authority he took possession of that stand of mine; Droste said: "Who are you?" He says: "I am Barrett, that is paying rent for them stands." "Oh," he says, "I was looking for you, but I couldn't find you." Barrett replied: "You had no business to take possession of them stands; didn't you know that I was paying rent for them?" "Well, I will see about that." So Droste said: "Go ahead and see." Droste said nothing about authority of Palmer, as I know of; don't remember Barrett saying, "Whose workmen are those working there?" I heard all the conversation that took place; this
14 was between 8 and 9 in the morning. Droste stood outside his place of business, 200 feet from these particular stands; nothing was said about a lease.

Barrett said he has the rent paid three months in advance. Droste said: "We were looking for you, but we couldn't find you."

Don't remember Barrett saying you have got yourself into a bad fix; did not pay attention; did not expect trouble. The conversation did not impress itself upon my memory.

Cross-examination:

I remember Droste saying he had been looking for Barrett; he did not say how long he had been looking for him; all I heard said when I went with Barrett to Droste was:

He went to Droste, asked by what authority he took possession of them stands? Droste asked: "Who are you?" He said: "I am Mr. Barrett, that is paying rent for them stands." He says: "We were looking for you, but couldn't find you;" and then Mr. Barrett says: "Well, I will see about that," and Mr. Droste says: "Well, go ahead and see." That is all I remember. I am not in the market; don't go there every day in month of April. I only went there this one day.

Redirect:

In this conversation with Droste Barrett also said he had paid three months' rent.

JAMES QUIGLEY, witness for plaintiff.

Direct:

I am a butcher; witnessed that paper (Plaintiff's Exhibit 1) and afterward collected the rent for Mr. Palmer; that receipt is in my handwriting (put in evidence, Exhibit 2). I am not in business no more; last did business on Fulton street, near Tompkins
15 avenue. We put the first building down there when the Wallabout market first opened on Washington avenue, 25 x 20 feet. We built this particular building in which Barrett's stands were, and then an extension afterward; saw the Barrett stands; don't know the value of the fixtures; don't know what the rental value of the stands is now or was at that time; have not been near the market for a year and a half to do any business; erected this building about five years ago; about three years since I was there in business. We erected the building immediately after the Wallabout market was leased to the city of Brooklyn. Me and Barrett went to Palmer and told him Barrett wanted to rent the stand. He said, What stand? and I told him the large one in the middle. Mr. Palmer signed the lease for it. We went over together and paid Mr. Palmer fifty dollars. I gave Barrett the receipt. Nothing was said about Barrett only paying $10 a month for them and getting at the rate of $96 for them.

Palmer came to my place up in Fulton street, demanded his money, and wanted a settlement right away. $650 was due him from me on another transaction.

Mr. Palmer said in reference to renting these stands, the idea of renting the stand to a butcher for $10 a month and putting in butcher fixtures and leaving the place all open the way it was. He wanted a settlement of the matter of the other suit between him and me.

Cross-examination:

I am not suing Mr. Palmer; my father, as my assignee, is; I don't claim them. The fronts of these stands were closed up and had a large folding door; they are No. 9 and 46 Wallabout market, on South street, on the east side of Washington avenue and north of Flushing avenue. I saw premises after Barrett took possession. The front of the building was made just the same as in Washington market. 40 feet had been taken out to put in rails; the
16 front was not torn out; it was made open by taking out the boards and putting rails the same as the market, and left open just the same as the other stands in the market; saw the premises in April, 1889; never saw a horse stabled there; have seen a horse in there, not hung up, standing on his four legs in one of these stands nearest Molloy's; there was a horse and wagon there

belonging to Molloy and Johnson the day I was there; often went there at night in month of April; never saw any other four-footed beasts or other horses or anything else there; saw the premises after Ryder left; don't know how long he was there; saw beef on the stands; noticed when there was no longer any beef on the stands. I was doing business in New York, and used to pass there every night. When Ryder left them he left stand open and canvassed up his meat; couldn't tell when Ryder gave up his business or left the place; know he did leave it. Of course, the stands were all open all the time, just the same as in the Washington market. When he left he left the stands open.

Redirect:

All the stands there are not open; some have folding doors; majority are open night and day, except the produce stands; meat stands are open; they have watchmen at night. The lots' numbers in the market on the map were 9 and 46; these stands were No. 3 and 5 South street, afterward made into 3 stands, 40 feet frontage, divided into 3; 30 feet off each end of the premises, 100 feet altogether, left 40 feet in the centre, 25 feet deep, 13⅓ feet front each. Before Mr. Barrett hired these stands the rental was $5 a month to Mr. Molloy; Mr. Barrett paid $10.

17 ISAAC MARX, witness for plaintiff.

Direct:

I am a butcher and have been in the butcher business about sixteen years; had a stand in Wallabout market from February 11th, 1889, to May, '90; know these stands and their rental value to be about $25, three stands each, per month; value of the stands have increased about 50 per cent. in the last year.

Cross-examination:

Was in Wallabout one year and three months. My stand was on East avenue, about two blocks from these stands; rented to Mr. Bullwinkle; he lives, I think, in South 9th street, Williamsburgh. I had only a verbal lease for 15 months while I staid there—no; it was a written lease; I recollect now. I left on the first of May last; went to my individual business, 73 and 75 Sands street. I go to the market most every day. I have been inside of these particular stands when Mr. Ryder and Mr. Shea or Mr. Healy was there in business. I know the value of fixtures, because I paid $125.00 for fixing up only one stand. I left for reason that my rent was increased from $35 to $50 per month; did not rent stands this year; never bought or sold leases in Wallabout market; price not raised during term of my lease. I hired the place, in fact, for more and sold out to my partner. My lease was the only transaction I had there. I know in general the rents have all advanced from a mere nothing to a big price.

Redirect:

I was in the butcher business at 73 and 75 Sands street, and paid for putting up butcher fixtures there six or seven years ago as well as in the market. My fixtures were new; not second-hand. I know the value of butchers' fixtures on stands and what such fixtures cost; think these stands fixed up were worth $200; the fix-
18 tures were worth about $200. In my estimation, it don't make any difference whether they were new or second-hand, as long as they are fit for the purpose.

Recross-examination:

It would make a difference, in my estimation, if they only cost $25 or $30; new ones would cost much more; they consisted of lumber, nails, and hooks; know value of such hooks; from 7 to 8 cents apiece, including the nails; paid no particular attention to these when they were put in; did not examine them particularly. I judged from what I paid for fixing one stand and this man fixing three; that is the only way; have been in business seven years in Sands street and fifteen months in the market; did not know Mr. Barrett very well; suppose my partner knows him. I had an ice box not included in the sum I mentioned; it alone cost $300. For $125 I had only a very few beams and hooks; that was all needed for the wholesale trade.

BENJAMIN STERN, witness for plaintiff.

Direct:

I have had a butcher stand in Wallabout market since April, 1890; have had other stands; been in the market a year and a half; know the stands in question; in my opinion, their rental value to-day is about $25 a month each. I pay $40 for mine; did not put up my own fixtures there; removed them from the other place; the only place where I had put them up; they consisted of beams and hooks, simply for a wholesale business.

I just merely noticed Barrett's fixtures as I passed to be the ordinary fixtures used in our line—hooks and beams for wholesale trade. Their value was nothing particular—between $100 and $200, labor included.

Cross-examination:

I did not know Barrett until this case began.

19 MARTIN BULWINKEL, a witness for plaintiff.

Direct:

I have retired from business; own and hire out four stands in Wallabout market; I have owned two of them four years and the other two one year; know the stands in question that Barrett had and the rental value of stands in the market; these are worth from

$15 to $20 per month each; the rental value now is a little higher than it was; do not know the value of fixtures; stands in Wallabout market are generally left open in summer, but not in winter.

Cross-examination:

I lease my stands from the city; formerly every two years; now from year to year; they don't give two-year leases any more.

CARSON H. FITTER, witness for plaintiff.

Direct:

I am in butcher business at 551 Myrtle avenue; had four stands in Wallabout market a short time when it opened, for three or four months, about six years ago; rented them after I gave up business; know the stands Barret had; don't know rental value; have erected fixtures myself; don't remember price I paid or know the value.

Cross-examination:

I did not pay any particular attention to the stands that Barret had; I never saw any horses or live cattle of any kind in them; have seen dressed beef and mutton there; don't know how long these premises were untenanted after that; heard Mr. Bulwinkel testify about butcher stands being left open; about half of them are left open and half closed; depends on time of year; in summer most of them are open.

Redirect:

It don't make any difference whether they have ice boxes or not; in summer time the whole place is open day and night.

Plaintiff rests.

Defendants' counsel move to dismiss the complaint on grounds—

That no demand was made on defendants for possession of this property.

That it is not proven that Droste entered into possession, physically or otherwise; the only interview with him was 200 feet away from the premises, and all he said to Mr. Barrett was, "We have been hunting for you."

That is not a demand or refusal to deliver up premises, and does not prove trespass or forcible entry and detainer; the evidence is entirely lacking to connect Mr. Droste here with forcible possession of these premises. Nobody has ever seen the goods in his possession, or in Mr. Palmer's, for that matter, and nobody has ever proved that he did convert them, and no evidence at all to establish any cause against Mr. Droste.

Motion denied.

Both defendants except.

Defendants put in evidence chap. 355 of the Laws of 1853, entitled "An act to vest in the United States of America jurisdiction

over certain lands in the city of Brooklyn and adjacent thereto," passed June 17th, 1853.

Court adjourned to Wednesday, December 10th, 1890.

21 WEDNESDAY, *December 10th*, 1890.

Met pursuant to adjournment.
Present: Counsel as before.

HENRY BERNSTEIN, called as a witness on behalf of defendants.

Direct:

I carry on the wholesale butcher business at No. 8 Wallabout market. I know the premises Nos. 3 and 5 South street, right opposite me; know Mr. Barrett; recall when he put the fixtures in that place. Prior to Mr. Barrett putting those fixtures in 3 and 5 South street the building was not closed in front. It was not boarded up before Mr. Barrett took it. It was used for a stable, I believe. I saw those butcher fixtures put in; noticed them every day; saw the lumber and material of which they were built, old, second-hand lumber, carted there from some other place; old rusty hooks, old joists, and old beams I saw put up in these different stalls; have been in the business ever since I was able to work; was the first butcher in the market; have bought and sold and had constructed fixtures for wholesale butchers in that market. The fixtures Barrett put in the premises consisted of a few uprights and the rest cross-beams with a few hooks on the cross-beams. In my opinion, they were not worth over $5 or $10 at the most.

Ryder, an uncle of mine by marriage, occupied them after February. He is in the butcher business, and, I think, stayed there one week. Afterwards I saw hay or wagons in there. Something stored there. They were open to any one that might use them; am familiar with rents in that locality, and for butcher shops especially. Rents in the locality have declined since February, 1889. There are quite some vacant butcher stalls in Wallabout market—two or three on the front and three stands on East avenue,
22 one next the butcher's that has been vacant five or six months.

I am able to state from my knowledge of the premises the rental value of the stands Barrett put the fixtures in has diminished since February, 1889. In March, 1889, they would have brought $10 to $12 a week; to-day I don't think they would bring $5 for each stand. I could explain the reason.

After Ryder left I saw carriages or wagons stored in there; premises were left open, nothing to prevent any one from going on.

Cboss-examination:

I have had a stand right opposite, on corner of Washington avenue and South street, since January, 1889; am a manager there for Schartzchild and Sulzberger; never in business on my own account; my employers pay $20 a month ground rent to the city; they own the building; it is one store high, 25 by 65 or 70 feet deep;

I am not sure; don't know what was paid for the building; simply used as a wholesale butcher shop; no other tenants; fitted up in the ordinary style; stands are open day while we are doing business, and we close the doors when we go away at night. I know some buildings there open day and night; this is the ordinary practice in New York city and largely the practice in Wallabout market. The three stands vacant for 5 or 6 months referred to were open day and night; still more open than Barrett's stands; these people have ice-houses, and everything is put into them and locked up; fixtures remain outside; anybody can go in day or night. There are a great many that are that way. I come to say these fixtures are worth but $5 or $10, because at the time when put in fixtures could be had for the trouble of carrying them away from the old market in New York that was torn down; there was no value attached to these fixtures only as kindling wood, and the hooks were old and rusty.

23 I was every day on the stand; saw all the hooks after they were put in; my best judgment is there were a couple of hundred, all rusty; the stands looked like old, second-hand stands when they were done; the worst looking I ever saw.

That is my opinion; was not here yesterday; know Mr. Marx, the butcher, as a reputable gentleman; I would differ with him if he testified, in his opinion, these fixtures were worth $200; would prefer my opinion. My four stands were all fixed up with new fixtures and did not cost $200, and my stands were 70 feet wide; got my fixtures new in Brooklyn; can give you the man's name; they were paid for; I made the contract for them.

I said in March, 1889, the stands hired by Barrett were worth ten or twelve dollars a week, but now not over five. Stands I now occupy as manager are only ones I ever had in Wallabout market; in my experience as a butcher have had lots of butcher fixtures for butcher shops made; besides these four stands the fixtures on the stands where I am manager are the only ones for wholesale butcher business that I have ever had anything to do with; was in the slaughtering business with my father for 15 years. Chas. Butterfass occupies one of our stands; don't know what rent he pays; my firm sublet to him; he is not in the wholesale business. I have had nothing to do with renting any other stands in this market; three stands that were unoccupied were owned by one Dressler; a man by name of May was there about six weeks ago; believe he staid one or two weeks.

WILLIAM H. PALMER, one of the defendants, witness for defendants.

Direct:

I have been a builder for 50 years; heard testimony of plaintiff's witnesses yesterday.

In spring of 1889 I was lessee of lots 9 and 46 in Wallabout mar-
24 ket; Quigley, who testified yesterday, was my agent in charge; had the renting and control thereof on my account; I signed the lease to plaintiff; Quigley acted as my agent

and fixed the rent in letting to her; in February Barrett paid the rent to July, 1889; no more rent was paid. These premises were simply an open stall, 40 x 25, one part of this building. I supposed, when I let it, I was letting one section; the entire building was 100 feet long with gables and front to the streets; one side is blocked up against the next adjoining building; it was made into a store with a pair of doors, windows on each side; it was about 20 to 25 feet high; lower story about twelve feet high. I owned the building; saw the fixtures put in the part let to Miss Barrett; they consisted of three beams, 3 x 8, about 25 feet long, three sticks of second-hand timber, unplaned, with, I should judge, 25 hooks on each stick, making about 75 hooks; there were uprights under them, which belonged to me, and were taken out of my building in knocking out the front; in the central part of the building there were three columns under the girders; they had cut them out half the thickness of the column to insert the beams to rest them on. In my opinion as a builder, accustomed to buy and sell and deal in such material, including the timber and putting it up, $20 would be a good remuneration for the whole job.

Premises, when let to Miss Barrett, were an enclosed building; never gave Quigley or Barrett or anybody permission to alter this building or take down the front, or make any alterations whatever; heard Barrett's testimony as to a conversation with me in which he stated I gave permission; I never had any such conversation with him; I gave no authority at all; did not see Barrett until after we were in the building ourselves; then he came and threatened me with a bill for damages; that is all the words I had with him. After letting and before Droste took possession I visited the premises several times; they were not occupied at all; one time I saw a drunken fellow lying on the floor asleep; next time there was a horse in there; also plenty of dirt there; every time I went there the premises were vacant.

I discharged Quigley as my agent about the first of April.

All the front of 40 feet of the building had been removed; nothing left there; I put up the front of the building; before I put Droste in there I looked for Barrett or Miss Barrett for about a month; I didn't find him.

Lease of city to defendant Palmer offered in evidence, marked Defendants' Exhibit A for identification.

Counsel for plaintiff objects. Objection sustained.

Both defendants except.

Cross-examination by Mr. Towns:

About April 1st, 1889, I appointed Droste my agent and told him to go on and have the front fixed up; he took possession as my agent of the whole premises; by the time he got in himself it was about the 1st of May; previous to that we commenced putting the front in; Droste put it in under my order; I did not pay for it, and at that time I had possession; I had promised to sell the buildings to

Droste; did not at that time; made a bill of sale of the premises to him long afterwards, about three or four months.

Cross-examination by Mr. HIRSH:

I have been a builder up to within a few months; am retiring, getting out; also run a theatre I built on Grand street; couldn't get paid for it, so I took it; was there pretty much every day until I had partially disposed of it. The lease to Barrett was executed at my house at night. Quigley was present; had no conversation with Barrett at the time or before. I was busy that night; did not say a word to Barrett; merely took the lease and signed it; supposed it was all right; did not read it; can read and write. In the
26 fifty years that I have been a builder I have executed a great many contracts and agreements. There was no conversation whatever between us three as to the substance of this paper that I was signing; I was too busy to attend to it; did not know what it contained until March, when I looked at the duplicate retained by me, and that called my attention to the building, the month after leasing to Miss Barrett; went there several times in March, but we took possession about 1st of April; did not state I took possession a month after I had leased; don't think I went there at all in February. From the 1st of March to the 1st of April I was there, I suppose, fifteen or twenty times; in daytime; each time I was there I saw a drunken man or a horse; sometimes it was filth and dirt in these stands; never saw the filth and dirt cleaned out; it was always there; $50 rent was paid about the 1st of February, in the evening; they brought the rent with them when I signed the lease, and that was paid in advance for five months. I stated that these fixtures consisted of three pieces of timber which had about 25 hooks on each; I mean that accurately; could not be mistaken; was in court all day yesterday; my hearing is pretty fair for an old fellow; heard testimony of Barrett, Marx, Fitter, and Bullwinkel and Bernstein to-day; heard what they said about the number of hooks and pieces of timber, and Bernstein that he saw 200 hooks, anyhow, and still I say there was not over 75 hooks, and the three pieces of timber and 75 hooks could have been put up for $20 or less. The last witness, who stated $10, is about as near as anybody; did not know that Mr. Barrett had made three stands, nor that there was any smashing to pieces there until a month had elapsed; it was about the 1st of March; I saw no fixtures there for three stands; I saw three beams; three sticks of timber there; that's all; heard testimony that there were three stands; they were mistaken; they don't know; I know; have fitted up places enough to know; heard about March 1st there
27 was somebody in possession of part; that Barret was getting back $8 out of $10. I had possession of the whole building right along. After giving possession to Barrett, when I saw the stands vacant, I had to put up the front of the building to save myself from fines. I went to work to put in the front. I didn't send the workmen there. Mr. Droste sent men. I gave him the right to do that. I did not see the workmen there. I wasn't down there

at all. I don't know nothing about that part. I went there off and on, but I did not go inside to see the workmen. There was work done on the outside; the whole front—40 feet—had been knocked out. I didn't see the workmen on the outside. When I went there the front was put up. I examined it to see that it was put up properly, but I had left it to Mr. Droste, the other defendant, my agent, who was fully as competent as I was to have it fixed.

Droste has been in possession ever since.

Recross by Mr. TOWNS:

(Handing witness paper.) My signature to this paper is mine; that is the bill of sale; that is an after consideration, a month behind time. My lawyer gave that to Droste four months after. I suppose that is my signature. I received that check and got the money.

Paper and check offered in evidence.

Plaintiff's counsel objects, as both dated five months after acts complained of.

The COURT: I think the bill of sale and check are immaterial.

(Marked for identification Droste Exhibit B and Droste Exhibit C.)

The stands were not painted, I am sure.

28 ADOLPH M. DROSTE, one of the defendants, witness for defendants, called and examined by Mr. TOWNS.

Direct:

I live at 188 Hewes street, Brooklyn; am in butter, cheese, and egg business in Wallabout market. About 1st of April, 1889, I bought from Mr. Palmer the buildings on lots 9 and 46, Wallabout market, and transfer of lease of same from the city. I first paid $100 and then $2,400 when the bill of sale of October 11th, 1889, was made.

Bill of sale put in evidence (marked Droste Ex. B).

Can't remember exact day I paid the $100; took possession latter part of April or 1st of May; moved in about April 28; 1st of May I opened.

Mr. TOWNS:

Q. Mr. Droste, did you get a lease from the city of Brooklyn to these premises?

Objected to unless time is fixed as immaterial.

Q. (Handing witness paper.) Look at that paper; what is that paper?

Objected to as incompetent, irrelevant, and immaterial.

Objection sustained.

Lease marked for identification Droste Exhibit D.

After I bought these premises from Palmer I saw they were unoccupied; I could see them daily; entirely vacant during the month of April. Mr. Palmer told me to go in and take possession. I then employed carpenters to put up the front and have occupied them ever since; understood Barret had a lease; tried, but could not find him to inquire about it; no demand was made upon me for these premises; have paid rent to city of Brooklyn; know what
29 premises rent for. The city rents the entire two lots for $32 per month. I don't think that is all they are worth; no demand ever made on me for the fixtures.

Cross-examined by Mr. DE WITT:

I claim I bought these premises from Mr. Palmer in April; there was a disagreement between us. I claimed I had bought and he claimed and still claims he had agreed to sell them to me at a future time. I demanded an assignment of the lease.

On motion the court allowed the defendant Palmer's answer amended as to abandonment according to the proofs.

Cross-examined by Mr. HIRSH:

Mr. Palmer did not tell me in the first coversation I had with him that he gave Barrett a lease on the place. I saw Mr. Palmer a half a dozen times, and during the conversations I had with him I got the information from him that Barret had had one previous to my taking possession, which was about the 1st of May; it might have been April 27th or 28th, not the 24th; remember I went in as soon as the front was up; it didn't take a week. I employed carpenters and saw them come there to work with axes and hammers and saws. There were butcher fixtures inside, and the workmen used these hammers, axes, and saws to remove these fixtures. Of course, they did not drop down themselves. After the front was up and whole job done Barrett came to see me, about April 29. I know it was in April. I was then in possession. There were two men with him. Barrett said, "What right have you to put up that front?" also said, "I am Mr. Barrett." I said I had been looking for him for some time and couldn't find him; did not say anthing about stealing his stands; had not then paid over $100 to Palmer; paid the $2,400 afterward, when he gave me the bill of sale; don't *you* know when I paid the $100 I took no receipt. That was not for
30 rent; am positive. In a proceeding affecting lots of which these premises are part I did not swear that the $100 was given as rent; never did that; don't know that Mr. Palmer so claimed. Palmer never said or claimed anything about the $100; can't say of my knowledge what he claimed. Barrett did not say on day he saw me that he owned these stands; asked whether I knew he had a lease on them. I testified before to the effect that I knew he had a lease. He did not ask or say a word about his fixtures. He spoke about boarding it up, closing it up—that is, if I remember right; of course, I may make a mistake. I expected to be sued at the time. I heard Mr. Palmer testify that he had placed

me in possession of those premises as his agent. I will not swear I paid the $100 before April 25th, 1889, or any money before May; think it was in May; am positive it was not before May; not until after I commenced business.

Redirect:

Mr. Palmer said that he had given a lease to a man by name of Barrett, and that he had deserted the place and abandoned it and caused him to be subject to a fine from the city, and he would protect me.

Don't know of my own knowledge the value of these premises—the fixtures Barrett had there—only what I have learned in the last few days. I know that rents have decreased about 5 per cent. I bought of Mr. Palmer the building on lots 9 and 46, 100 x 25 feet, and the transfer of the lease unexpired, lease from the city, which included these butcher stalls. The building fronted on Washington avenue, its side was on South street, and ran back to West avenue. I think I could duplicate it for about $1,000 as it is now.

By the COURT:

Q. You paid $1,500 for the good will?
A. That is the idea.

31 By Mr. TOWNS:

Q. Of the entire premises?
A. Yes.

There are other tenants under me to whom I sublet; not in the stalls in question; I occupy them myself; get $25 for other stalls; no others like these; the others are produce men. I also have my store on West avenue. For $25 a month I let space 25 x 30—that is, the corner; it is more desirable. I get $35 for the corner store. It is within the building, walled in separately; not part of the premises occupied by Barrett, that were open; these were never open. I gauge the decrease in rental value, because I think business is a great deal worse than it was one or two years ago, and for that reason maybe lots are as high as they were. It is harder to get those leases, but they are not so desirable. I think three-quarters of the tenants would be glad to get out if they could without losing money—not my individual thoughts, facts which can be proved by the market people; heard some of them testify yesterday with me, especially the one who claimed they had raised 50 per cent. Pretty near the whole market would support me. Have not been through the whole market for the purpose of testifying in this case. I knew the facts; have made inquires within the last three months, but not the last month. I asked Bernstein, the witness that was here, what he thought about rents; also one Ehlers, who could not come down, as he was alone in his place. He owns a stand in the butchers' row, about 200 feet from these stands; also spoke to Mr. Smith. Altogether I spoke to three people for purpose of bringing them down to testify in this case; spoke to them

last night, after I heard a man testify rents had increased 50 per cent. I say on my own knowledge rents have decreased—rents all over the market, and especially the butchers' row; don't know who is getting their rent cheaper than a year ago; know Mr. Malloy; have not spoken to him in a year and a half.

32 CHRISTIAN SCHNEIDER, witness for defendants.

Direct:

I am the carpenter and builder who boarded up these premises described; am able to state what the fixtures there were worth and what it would cost to put them up. It would cost, including the material, labor, everything, the way they were put up, about $40; was not there all the time while putting up the boards; went there on and off. The premises were vacant; no one there but Droste, who told me what to do; did not see Mr. Barrett there.

Cross-examination:

There were fixtures there for three stands, and I took them down at request of Mr. Droste. They were just timber put up and hooks put in there for three stands; never put up wholesale butchers' fixtures; that is not my business. These stands were not painted. I am sure it was old timber.

HENRY KAUTZMANN, witness for defendants.

Direct:

I am a carpenter; worked for Mr. Schneider on this building, No. 9 and 46 Wallabout market. I put up the front; was there at such time; did not see Mr. Barrett there; saw a man I did not know; saw Droste.

CHARLES SMITH, witness for defendants.

Direct:

I carry on business in Wallabout market, and have done so since 1885; know the rental value of property there, such as the stalls in suit. I don't think there is any material change in the rental value of butchers' stalls in that vicinity. I think, if anything, it has slightly declined since February, 1889.

33 Cross-examination:

For five or six years I have been interested in eight stands; no material change in rental value during last two years; it depends on the style of building; know the particular stands occupied by Droste; their present rental value is about $30 per month; the whole 25 x 40 feet; do not know any place on South street vacant; don't know what they get on that particular street; on the next street we get $35 for a much superior location; this is for the building No. 3 Wallabout market, 75 x 30; the tenant puts in his own fixtures.

JAMES MOLLOY, witness for defendants.

Direct:

I am a produce dealer, 46 West avenue, Wallabout market; know the premises in controversy; am in the same building; pay the same rent I did four years ago; rents have increased in this vicinity; my rent has not been increased.

Cross-examination by Mr. TOWNS:

I was in court yesterday; came at Mr. Palmer's request; was not subpœnaed; did not talk with him about rental values; was present when the conversation was going on; had no conversation with Palmer about the lots in Wallabout market yesterday; Mr. Palmer and his lawyer were talking about the lots and I said I paid the same rent I did four years ago; did not tell them rents had not increased there.

Q. Can you imagine any reason of his calling you unless you had said that?

Plaintiff objects. Sustained. Mr. Towns excepts.

Mr. Palmer has not said anything to me this morning about the lease; have just spoken to him; saw Barrett in the market;
34 he asked me if I was coming down here; did not tell Barrett Palmer is going to call me as a witness; just wait till I get on the stand and I will sockdolager him; can't tell how his lawyer happened to refer to me in his cross-examination of Droste; am not working both sides of this case. I saw Barret this morning and Palmer last evening.

Cross-examination by Mr. HIRSH:

Have had no conversation with Droste about this action; previous to this action talked with him about relations between Dorste and Palmer; last April Droste wanted me to sign a paper that I witnessed Mr. Palmer sell him the building; I told him I could not do it; I didn't hear Mr. Palmer say that he sold him the buildings; he merely put him there as an agent to collect rents.

Mr. Towns objects as incompetent, irrelevant, and immaterial and relates to a transaction between two other parties.

The COURT: I will allow it; it is to contradict Mr. Droste's testimony.

He said if I wouldn't sign this paper he could get along without me; didn't speak to him again until last October; he demanded October rent.

Mr. TOWNS: I move to strike this all out. Motion denied. Exception.

In the case between him and Mr. Palmer he asked me to be a witness.

Mr. Towns: I move to strike out what he said. Motion denied. Exception.

He asked me to sign that paper that I was a witness. I refused. He said nothing else at that time about testifying.

By Mr. Towns:

I was there the night when Mr. Palmer told Mr. Droste to
35 go down there as his agent and collect his rents some time in April; can't remember date exactly; we were at Palmer's house prior to Droste going into the building. I occupy part of the premises, 12 x 60, on West avenue; no one with me; Johnson occupies next stand. I pay $20 and Johnson $15 a month; saw Barrett's stands; don't think they were painted.

Hugh Vaughn, witnesss for defendants.

Direct:

I am in the department of city works. I have produced in court map of Wallabout lands, where market is located; have heard premises in suit described, No. 9 and 46, shown on this map. (Witness points them out.)

Mr. Towns: I offer in evidence lease of Wallabout market by United States to city of Brooklyn of October 28, 1884, and renewal. I have lease to Mr. Palmer from October, 1887, to October, 1889.

Mr. Towns: I offer in evidence the lease of the city of Brooklyn to William H. Palmer, dated October 7th, 1887, of these premises alleged to have been trespassed on and other premises.

We offer it in mitigation of any damages. I understand they claim damages the rental value of these premises from time Barrett rented them up to present date. We offer to show by this lease Mr. Palmer's estate expired in October, 1889, a year and four months before the term of Mr. Barrett's lease expired.

Plaintiff objects. Objection sustained. Exception.
(Witness produces a lease of the city to Droste.)

Mr. Towns: I offer lease to Droste, Defendants' Exhibit
36 D, for identification, from city of Brooklyn for lands and premises on which the alleged trespass is said to have been committed, dated October 7th, 1889, for term of one year.

Objection by plaintiff. Sustained. Exception.

Mr. Towns offered lease *to* city to Droste, dated December 7th, 1890, as tending to mitigate the damages for which Droste might be liable.

Objected to as incompetent. Sustained. Exception.
Marked for identification Droste Ex. E.

The city receives the rent of these premises.

Plaintiff's attorney admits these lands in controversy — included in the land ceded by the act of 1853.

Q. Does the city lease the land of Wallabout market for a longer period than from year to year?

Objected to. Sustained. Exception.

AUGUSTUS E. W. SMITH, witness for defendant-.

Direct:

I live at 211 Hewes street; know Droste and Palmer; was present at a conversation between them prior to Droste taking possession of these premises. This was at Mr. Palmer's house. He said the premises were deserted and to go in and take possession as soon as possible and he would see him all right. I saw the premises before Droste went in. They were not occupied at all. The place was open and I think I saw a bale of hay laying in there and horse dirt, some butcher's fixtures; it was unoccupied; anybody could go in there; the whole place was open.

CHRISTIAN SCHNEIDER recalled for the defendants:

37 It would cost about $50 to put back the front of the premises that I did put back; that would be a fair and reasonable price.

WILLIAM H. PALMER, recalled.

By Mr. TOWNS:

Q. Mr. Palmer, has Mr. Barrett, since the time he was in your house and gave the $40, ever tendered you any rent for those premises?

Mr. HIRSH: I object.

Objection sustained. Exception.

Q. Since the 1st day of February, 1889, has Barrett ever tendered or offered to pay you any rent for those premises?

Objected to. Sustained. Exception.

Testimony closed.

Mr. TOWNS: I move to dismiss the complaint because it appears that the acts of trespass complained of, if committed at all by the defendants—I include Droste and Palmer for the purposes of this motion—were committed upon territory outside of the State of New York, and consequently outside of the city of Brooklyn, viz., committed upon United States territory and reservation belonging to the United States, used for the purpose of navy yards, docks, marine hospitals, &c., and upon the ground that it appears upon all the evidence now that this court has not jurisdiction of the subject-matter of this action.

Motion denied. Both defendants except. Counsel for the respective parties sum up.

The court then charged the jury as follows:

GENTLEMEN: This is an action brought to recover damages for a trespass committed on or about April 25, 1889. The parties
38 agree as to many of the facts in this case. They agree that on the first day of February, 1889, or about that time, the lease commenced; that on that date Mr. William H. Palmer, one of the defendants, made a lease to Mary H. Barrett, the plaintiff, of two stands in Wallabout market, and that the lease was made for two years from February 1, 1889, at the yearly rental of $120 per year, payable in monthly installments in advance.

There is no dispute that Miss Barrett paid the rent from the first of February to the first of July, 1889, and there is no dispute that Miss Barrett took possession or had under tenants of these leased stands or a portion of them.

It appears that one or two of the stands were occupied for about a month, and that then they were vacant, and that on or about the 25th of April, 1889, a year ago last April, Mr. Droste, one of the defendants, by direction of Mr. Palmer, the other defendant, took possession of these stands and deprived the plaintiff, Miss Barrett, of their possession.

Now, gentlemen, I charge you that the acts of Mr. Palmer and Mr. Droste were wrongful as against this plaintiff, and that by the reason of their acts on that occasion, when they took possession, the plaintiff is entitled to damages, and that the only question you have to decide on all the evidence in this case, which is pertinent to the issue, is the amount of damages which the plaintiff is entitled to recover against both of these defendants.

You are not to regard what has been said by either counsel as to the law of this case; you are to take the law from me. You are to take the facts not from either counsel, but from the witnesses as you have heard them on the witness stand. I charge you that the sole question in this case is as to the amount of damages the plaintiff is entitled to recover for the wrongful acts of the defendants in taking possession of these stands on the 25th of April, 1889, or about that time.

The plaintiff is entitled to recover the value of the fixtures
39 which she had placed in these stands. The testimony varies on this point. There is testimony tending to show that these fixtures were worth five dollars only. One of the witnesses for the defendants testifies that they were worth about $5.00; some of the witnesses for the plaintiff testify that they were worth $200, and you have the testimony of other witnesses giving figures between $5.00 and $200. You are to say on all the evidence in the case what those fixtures which were placed in these stands by Miss Barrett were worth and the plaintiff is entitled to recover that sum which you decide was the real value of the fixtures.

The plaintiff is entitled to recover the value of this lease on the 25th of April, 1889—that is, she is entitled to recover what this lease was worth at that date over and above the rent paid. The rent paid was ten dollars a month. I charge you that the plaintiff

is entitled to recover against each of these defendants whatever the lease was worth over and above that sum for the balance of the term.

The defendants are entitled to a credit for what it would cost to replace the side of the building which Mr. Barrett removed. Mr. Barrett had a right to remove the side of the building, but at the end of the lease he would be bound to replace it. Therefore the defendants are entitled to be credited on the damages which you award the plaintiff with the amount which it would cost to replace the side of the building in question.

Gentlemen, the simple question you have to decide in this case is what damages the plaintiff is entitled to recover against these two defendants. You are to decide, first, as to the value of the fixtures, and, secondly, you are to say what the rental value was over and above the rent paid. The testimony varies as to what these premises would rent for. That is a question of fact, and as to that I have no opinion. I leave that squarely to you. You are to
40 take this case and decide it justly and fairly between the plaintiff and the defendants.

Mr. DE WITT: I take an exception to that part of your honor's charge which holds that Mr. Palmer is a wrong-doer in this case.

Mr. Towns made the following requests to charge:

1. That the measure of damages is the rental value of these premises up to the time of bringing the suit, if any, over what she paid.

2. That it is the difference in the rental value from the 1st day of April, 1889, up to the 5th day of December, 1890.

3. That the jury may bring in a verdict against one or both defendants or six cents against Droste and any other sums against Palmer; all of which the court refused; to which Mr. Towns duly excepted.

Mr. Towns requests the court to charge the jury that they cannot give punitive damages.

The COURT: I so instruct the jury.

The jury rendered a verdict for plaintiff in the sum of $1,520.

Counsel for both defendants then moved upon all the grounds stated in section 999 of the Code of Civil Procedure for a new trial.

The court entertained the motion and denied the same.

All the evidence material to the questions sought to be reviewed and all the proceedings had upon the trial are above stated.

41 At a term of the city court of Brooklyn held at the Kings county court-house, in the city of Brooklyn, on the tenth day of December, 1890.

Present: Hon. N. H. Clement, chief judge.

MARY H. BARRETT
against
WILLIAM H. PALMER and Another. } Certificate of Verdict. 365.

Under the charge of the judge the jury retired in charge of Officer John Spaulding (sworn). Returning into the court, they say they find a verdict in favor of the plaintiff as against both defendants, and assess the damages at ($1,520) fifteen hundred and twenty dollars.

(Jury polled.) Allowance 5 per cent.

By def't PALMER: Motion for new trial on the minutes denied.

By def't DROSTE: Motion for a new trial on the minutes denied.

Stay of thirty days after entry of judgment and thirty days to make a case.

Extract from the minutes.

C. W. THOMAS, *Clerk.*

42 The City Court of Brooklyn.

MARY H. BARRETT, Plaintiff,
against
WILLIAM H. PALMER and ADOLPH M. DROSTE, Defendants. } Judgment, December 16, 1890.

The issues in this action having been brought on for trial before Mr. Chief Judge Clement and a jury at a trial term of this court held on the ninth day of December, 1890, and the issues having been tried and a verdict in favor of the plaintiff having been duly rendered on the 10th day of December, 1890, for the sum of one thousand five hundred and twenty dollars, and the plaintiff's costs having been adjusted at the sum of two hundred and seventy-nine $\frac{19}{100}$ dollars—

Now, on motion of Hirsh & Rasquin, attorneys for the plaintiff, it is adjudged that said Mary H. Barrett, the plaintiff, recover of William H. Palmer and Adolph M. Droste, the defendants, the sum of one thousand five hundred and twenty dollars found by the jury, together with two hundred and seventy-nine $\frac{19}{100}$ dollars costs, making in all the sum of one thousand seven hundred and ninety-nine $\frac{19}{100}$ dollars.

C. W. THOMAS, *Clerk.*

43 City Court of Brooklyn.

MARY H. BARRETT, Plaintiff and Respondent,
against
WILLIAM H. PALMER and ADOLPH M. DROSTE, Defendants and Appellants.

Please take notice that the defendants, William H. Palmer and Adolph M. Droste, appeal to the general term of this court from the judgment of this court in favor of the plaintiff and against the defendants for the sum of one thousand seven hundred and ninety-

nine and $\frac{19}{100}$, herein entered in the office of the clerk of this court on the 16th day of December, 1890, and from the order of Mr. Justice Clement, made on the 10th day of December, 1890, denying the motion for a new trial herein on each and every of the grounds specified in section 999 of the Code of Civil Procedure and entered in the office of the clerk of the city court of Brooklyn on the 14th day of January, 1891.

Dated January 15th, 1891.

Yours, &c.,

HENRY C. DE WITT,
Attorney for Def't Palmer, 206 Broadway, New York City.
MIRABEAU L. TOWNS,
Attorney for Def't Droste, 16 Court Street, Brooklyn, N. Y.

To C. W. Thomas, Esq., clerk of the city court of Brooklyn; Messrs. Hirsh & Rasquin, plaintiffs' attorneys, 4 and 5 Court square, Brooklyn, N. N.

44 PLAINTIFF'S EXHIBIT 1.

This indenture, made the first day of February, one thousand eight hundred and eighty-nine, between W. H. Palmer, of the city of Brooklyn, county of Kings and State of New York, party of the first part, and Mary H. Barrett, of said city, county and State, party of the second part, witnesseth:

That the said party of the first part hath letten, and by these presents doth grant, demise, and to farm let, unto the said party of the second part two certain stands in the Wallabought market known as Nos. three and five, on South street, between Washington and West avenues, with the appurtenances, for the term of two years from the first day of February, one thousand eight hundred and eighty-nine, at the yearly rent or sum of one hundred and twenty dollars, to be paid in equal monthly payments in advance, to wit, ten dollars on the first day of each month during said term. And it is agreed that if any rent shall be due and unpaid, or if default shall be made in any of the covenants herein contained, then it shall be lawful for the said party of the first part to re-enter the said premises, and to remove all persons therefrom. And the said party of the second part doth hereby covenant to pay to the said party of the first part the said yearly rent as herein specified.

And at the expiration of the said term the said party of the second part will quit and surrender the premises hereby demised in as good state and condition as reasonable use and wear thereof will permit, damages by the elements excepted.

And the said party of the first part doth covenant that the said party of the second part, on paying the said yearly rent and performing the covenants aforesaid, shall and may peaceably
45 and quietly have, hold and enjoy the said demised premises for the term aforesaid.

In witness whereof the parties hereto have set their hands and seals the day and year first above written.

W. H. PALMER. [L. S.]
M. H. BARRETT, [L. S.]
Per M. BARRETT.

Sealed and delivered in the presence of—
JAMES QUIGLEY, *Ag'tt.*

PLAINTIFF'S EXHIBIT 2.

Rec'v'd, B'klyn, M'ch 15th, 1889, from M. H. Barrett the sum of forty dollars, same being in full for rent of stands on South St. near Washington Ave., Wallabout market, up to July, 1889, in advance.

$40.00. W. H. PALMER,
Per JAMES QUIGLEY.

EXHIBIT A.

Department of city works of the city of Brooklyn, commissioner's office, municipal building.

OCTOBER 7TH, 1887.

By authority of the common council of said city permission is hereby granted to William H. Palmer to occupy for the term of two (2) years from the date hereof lot- Nos. 9 and 46 in the Wall-
46 about market, as laid down on the map thereof on file in the said department of public works for the sale of produce and to erect a building thereon, subject, however, to the following terms and conditions, to wit:

First. The said party shall pay to the city of Brooklyn for the use of said lot thirty-two (32) dollars per month in advance, on the first day of each month, at the office of the department of city works of said city.

Second. No building shall be erected upon said lot except of wood, nor to exceed two stories in height. Every building thereon shall stand upon suitable posts set firmly in the ground and shall rise at least nine (9) inches above the curb, so that the air can circulate freely under the same. No privy vault shall be permitted on the premises unless the same is connected with the street sewer. A sidewalk of a width and character to be prescribed by the commissioner of the said department shall be built and kept in repair by the holder of this permit. Before any building is erected upon said lot plans for the same shall be submitted to the said commissioner and they shall be subject to his approval.

Third. No wine, malt or spirituous liquors shall be sold on the premises and the premises shall be at all times kept in a cleanly condition.

Fourth. In case the holder of this permit shall fail or neglect to pay any month's rent for the period of ten days after it becomes due,

this permit shall thereupon and by reason of any such failure be and become revoked, and the said commissioner of city works may immediately enter upon said lot and, without any proceedings at law or process of law, take possession of the same and remove
47 all persons and property therefrom and any building erected upon said lot shall be and become the property of the city of Brooklyn.

Fifth. In case the United States Navy Department (from which the said market lands are leased by the city) shall demand possession of the same, or the said premises shall be required by the said city of Brooklyn for any purpose, then in that case and in all cases the permission hereby granted shall cease and determine, with the right of the city to the possession of the said premises under such lease, or at the end of thirty days after notice to the holder of this permit by the said commissioner of city works that said premises are required by said city, and the holder of this permit shall forthwith surrender the said lot to said city and remove therefrom any building erected thereon, failing to do which the said commissioner of city works may remove the same, and all other property found on the premises at the expense of the party accepting this permit or his assigns.

Sixth. This permit may, at the option of the holder keeping and performing all the conditions thereof, be renewed at the end of its term except for reasonable and just cause to be determined by the commissioner of the said department of city works at such modified or increased rate as the said commissioner shall, in his discretion, deem proper and necessary for the proper support and care of the market.

Seventh. Before the term mentioned in this permit or the renewal or renewals thereof shall have fully expired, the holder of this permit, providing the same be then in force, shall remove any and all buildings erected thereon; failing to do which the same shall become the property of said city, and the said commissioner or other agent of the city may, without any process of law, take possession of the same.

48 Eighth. The holder of this permit shall keep and observe all rules and regulations which the city authorities may from time to time adopt for the care, government, and protection of the market.

Ninth. Neither this permit nor the premises herein mentioned shall be transferred or assigned nor the character of the business changed without the written consent of the commissioner of the department of city works.

Tenth. In the case of the failure or neglect of the holder of this permit to observe and fully perform in every particular the preceding second, third, eighth, and ninth conditions, then and in that case the rights hereby granted shall, at the option of said commissioner, cease and determine, and the holder shall, within five days after being thereto required by the said commissioner, surrender the said premises to the said city and remove all his property therefrom; failing to do which the said commissioner may, without any process of law, take possession of the said premises, and any build-

ing remaining thereon shall be and become the property of said city.

JAMES A. MURTHA,
Deputy Commissioner of City Works.

Attest: D. L. NORTHUP,
Per GENZ, *Secretary.*

I hereby accept the foregoing permit and agree to and promise to perform the terms and conditions thereof upon my part.

W. H. PALMER.

49 DROSTE EXHIBIT B.

Know all men by these presents that I, William H. Palmer, of the city of Brooklyn, party of the first part, for and in consideration of the sum of two thousand four hundred dollars, lawful money of the United States, to me in hand paid, at or before the ensealing and delivery of these presents, by Adolph M. Droste, of the same place, party of the second part, the receipt whereof is hereby acknowledged, have bargained and sold, and by these presents do grant and convey unto the said party of the second part, his executors, administrators, and assigns, the two-story frame building, being in dimensions twenty-five feet front and rear and one hundred feet in depth on each side, now erected and standing upon the leased lots known as numbers 9 and 46 in the Wallabout market, in the city of Brooklyn:

To have and to hold the same unto the said party of the second part, his executors, administrators, and assigns forever; and I do, for my heirs, executors, and administrators, covenant and agree to and with the said party of the second part to warrant and defend the sale of the said building hereby sold unto the said party of the second part, his executors, administrators, and assigns, against all and every person and persons whomsoever.

In witness whereof I have hereunto set my hand and seal this eleventh day of October, one thousand eight hundred and eighty-nine.

W. H. PALMER. [L. S.]

Sealed and delivered in the presence of—
HENRY C. DE WITT.

50 STATE OF NEW YORK, }
City of New York, County of New York, } *ss.:*

On the 11th day of October, in the year one thousand eight hundred and eighty-nine, before me personally came William H. Palmer, to me known and known to me to be the individual described in and who executed the foregoing instrument and who acknowledged to me that he executed the same.

PHILLIPS ABBOTT,
Notary Public, Kings Co., N. Y.

Certificate filed in N. Y. Co.

DROSTE EXHIBIT C.

Mirabeau L. Towns.

No. 2840. BROOKLYN, *October* 12, 1889.

National City Bank of Brooklyn.

Pay to the order of Wm. H. Palmer two thousand four hundred dollars.

$2,400. MIRABEAU L. TOWNS.

(Endorsed:) "W. H. Palmer."

51 EXHIBIT D.

Department of city works of the city of Brooklyn, commissioner's office, municipal building.

OCTOBER 7, 1889.

By authority of the common council of said city permission is hereby granted to Adolph M. Droste to occupy for the term of one (1) year from the date hereof lot- Nos. 9 and 46 in the Wallabout market, as laid down on the map thereof on file in the said department of city works, for the sale of produce and to erect a building thereon, subject, however, to the following terms and conditions, to wit:

First. That said party shall pay to the city of Brooklyn for the use of said lot thirty-two (32) dollars per month, in advance, on the first day of each month, at the office of the department of city works of said city.

Second. No building shall be erected upon said lot except of wood nor to exceed two stories in height. Every building erected thereon shall stand upon suitable posts set firmly in the ground, and shall rise at least nine (9) inches above the curb, so that the air can circulate freely under the same. No privy vault shall be permitted on the premises unless the same is connected with the street sewer. A sidewalk of the width and character to be prescribed by the commissioner of the said department shall be built and kept in repair by the holder of this permit. Before any building is erected upon said lot plans for the same shall be submitted to the said commissioner, and they shall be subject to his approval.

Third. No wine, malt or spirituous liquors shall be sold on the premises, and the premises shall be at all times kept in a cleanly condition.

52 Fourth. In case the holder of this permit shall fail or neglect to pay any month's rent for the period of ten days after it becomes due this permit shall thereupon and by reason of any

such failure be and become revoked, and the said commissioner of city works may immediately enter upon said lot and, without any proceedings at law or process of law, take possession of the same and remove all persons and property therefrom, and any building erected upon said lot shall be and become the property of the city of Brooklyn.

Fifth. In case the United States Navy Department (from which the said market lands are leased by the city) shall demand possession of the same or the said premises shall be required by the said city for any purpose, then and in that case and in all cases the permission hereby granted shall cease and determine, with the right of the city to the possession of the said premises under such lease or at the end of thirty days after notice to the holder of this permit by the said commissioner of city works that said premises are required by said city, and the holder of this permit shall forthwith surrender the said lot to said city and remove therefrom any building erected thereon; failing to do which the said commissioner of city works may remove the same and all other property found on the premises at the expense of the party accepting this permit or his assigns.

Sixth. This permit may, at the option of the holder keeping and performing all the conditions thereof, be renewed at the end of its term, except for reasonable and just cause, to be determined by the commissioner of the said department of city works, at such modified or increased rate as the said commissioner shall in his discretion deem proper and necessary for the proper support and care of the market.

53 Seventh. Before the term mentioned in this permit or the renewal or renewals thereof shall have fully expired the holder of this permit, providing the same be then in force, shall remove any and all buildings erected thereon; failing to do which the same shall become the property of said city, and the said commissioner or other agent of the city may, without any process of law, take possession of the same.

Eighth. The holder of this permit shall keep and observe all rules and regulations which the city authorities may from time to time adopt for the care, government, and protection of the market.

Ninth. Nither this permit nor the premises herein mentioned shall be transferred or assigned nor the character of the business changed without the written consent of the commissioner of the department of city works.

Tenth. In the case of the failure or neglect of the holder of this permit to observe and fully perform in every particular the preceding second, third, eighth, and ninth conditions, then and in that case the rights hereby granted shall, at the option of the said commissioner, cease and determine, and the said holder shall, within five days after being thereto required by the said commissioner, surrender the said premises to the said city and remove all his prop-

erty therefrom; failing to do which the said commissioner
54 may, without any process of law, take possession of the said premises, and any buildings remaining thereon shall be and become the property of said city.

JOHN P. ADAMS,
Commissioner of City Works.

Attest: D. L. NORTHUP, *Secretary.*

I hereby accept the foregoing permit and agree to and promise to perform the terms and conditions thereof upon my part.

ADOLPH M. DROSTE.

EXHIBIT E.

Department of city works of the city of Brooklyn, commissioner's office, municipal building.

OCTOBER 7, 1890.

By authority of the common council of said city permission is hereby granted to Adolph M. Droste to occupy, for the term of one (1) year from the date hereof, lots Nos. 9 and 46 in the Wallabout market, as laid down on the map thereof on file in the said department of city works, for the sale of produce and to erect a building thereon, subject, however, to the following terms and conditions, to wit:

First. The said party shall pay to the city of Brooklyn for the use of said lot thirty-two (32) dollars per month, in advance, on the first day of each month, at the office of the department of city works of said city.

55 Second. No building shall be erected upon said lot except of wood nor to exceed two stories in height. Every building erected thereon shall stand upon suitable posts set firmly in the ground and shall rise at least nine (9) inches above the curb, so that the air can circulate freely under the same. No privy vault shall be permitted on the premises unless the same is connected with the street sewer. A sidewalk of a width and character to be prescribed by the commissioner of the said department shall be built and kept in repair by the holder of this permit. Before any building is erected upon said lot plans for the same shall be submitted to the said commissioner and they shall be subject to his approval.

Third. No wine, malt or spirituous liquors shall be sold on the premises, and the premises shall be at all times kept in a cleanly condition.

Fourth. In case the holder of this permit shall fail or neglect to pay any month's rent for the period of ten days after it becomes due this permit shall thereupon and by reason of any such failure be and become revoked, and the said commissioner of city works may immediately enter upon said lot and, without any proceedings

at law or process of law, take possession of the same and remove all persons and property therefrom, and any building erected upon said lot shall be and become the property of the city of Brooklyn.

Fifth. In case the United States Navy Department (from which the said market lands are leased by the city) shall demand possession of the same, or the said premises shall be required by the said city of Brooklyn for any purpose, then and in that case and in all cases the permission hereby granted shall cease and determine with the right of the city to the possession of the said premises under such lease, or at the end of thirty days after notice to the
56 holder of this permit by the said commissioner of city works that said premises are required by said city, and the holder of this permit shall forthwith surrender the said lot to said city and remove therefrom any building erected thereon; failing to do which the said commissioner of city works may remove the same and all other property found on the premises at the expense of the party accepting this permit or his assigns.

Sixth. This permit may, at the option of the holder keeping and performing all the conditions thereof, be renewed at the end of its term, except for reasonable and just cause, to be determined by the commissioner of the said department of city works, at such modified or increased rate as the said commissioner shall in his discretion deem proper and necessary for the proper support and care of the market.

Seventh. Before the term mentioned in this permit or the renewal or renewals thereof shall have fully expired the holder of this permit, providing the same be then in force, shall remove any and all buildings erected thereon; failing to do which the same shall become the property of said city, and the said commissioner or other agent of the city may, without any process of law, take possession of the same.

Eighth. The holder of this permit shall keep and observe all rules and regulations which the city authorities may from time to time adopt for the care, government, and protection of the market.

Ninth. Neither this permit nor the premises herein mentioned shall be transferred or assigned nor the character of the business changed without the written consent of the commissioner of the department of city works.

Tenth. In the case of the failure or neglect of the holder of
57 this permit to observe and fully perform in every particular the preceding second, third, eight-, and ninth conditions, then and in that case the rights hereby granted shall, at the option of said commissioner, cease and determine, and the said holder shall within five days after being thereto required by the said commissioner surrender the said premises to the said city and remove all his property therefrom; failing to do which the said commissioner may, without any process of law, take possession of the said premises,

and any buildings remaining thereon shall be and become the property of said city.

JAMES A. MURTHA,
Dep'ty Commissioner of City Works.

Attest:
D. L. NORTHUP, *Secretary,*
Per JONES.

I hereby accept the foregoing permit and agree to and promise to perform the terms and conditions thereof upon my part.

A. M. DROSTE.

58 ADDED EXHIBIT.

Permission is hereby granted to the city of Brooklyn to occupy that portion of the vacant Government lands situated on Washington and Flushing avenues, in the city of Brooklyn, county of Kings, State of New York, bounded and described as follows, viz:

Beginning in the southwesterly corner of the brick wall enclosing the naval hospital grounds, extending thence in a westerly direction along the line of Flushing avenue, to its intersection with Washington avenue; thence in a northerly direction, along the line of Washington avenue, one thousand (1,000) linear feet; thence in an easterly direction, parallel with Flushing avenue, to the naval hospital wall; thence in a southerly direction along said naval hospital wall to point or place of beginning.

It is distinctly understood that the permission herein granted is solely upon the conditions, that the premises in question are to be used only as a stand for the market wagons bringing produce into the city from the adjacent country and those with whom they trade; that the city of Brooklyn will patrol and efficiently police the said premises from the hospital wall on the east to the navy yard fence on the westerly side of Washington avenue; that no permanent buildings or structures be erected on the lands, there being no objection to the erection of wooden booths, sheds, or other temporary buildings for the sale of groceries, farm produce, horse feed and other goods, for restaurant purposes, and for the purpose of shelter from the weather; and that during the occupancy of said premises by the city of Brooklyn, the "water tax" for water consumed by the navy yard be reduced to the same rate as that charged to manufacturing establishments in the city of Brooklyn, *i. e.*, one (1) cent per one hundred (100) gallons.

59 It is further agreed that no part of the lands herein mentioned shall be used or occupied for the sale of or the traffic in any kind of wines, spirituous or malt liquors.

It is further agreed by the parties hereto that this permission shall remain in force, under the above conditions, and shall terminate at any time on thirty (30) days' notice from the honorable Secretary of the Navy.

It is also further agreed that upon the termination of the permission herein granted the city of Brooklyn will quit and surren-

der the premises and remove therefrom, at its own proper cost and expense, all materials of every kind not the property of the United States Government.

In witness whereof, the parties have hereto set their hands and seals this twenty-eighth day of October, A. D. 1884.

W. A. KIRKLAND,
Captain U. S. Navy, Commanding Navy Yard, New York, For and in Behalf of U. S. Navy Department.
W. H. FLEEMAN,
Commissioner Department of City Works, City of Brooklyn.

Signed, sealed, and delivered in the presence of—
RULIF VAN BRUNT.

60 At a general term of the city court of Brooklyn held at the county court-house, in the city of Brooklyn, on the 26th day of October, 1891.

Present: Hon. Augustus Van Wyck, Hon. William J. Osborne, judges.

MARY H. BARRETT, Plaintiff and Respondent,
against
WILLIAM H. PALMER and ADOLPH M. DROSTE, Defendants and Appellants.

An appeal from the judgment entered in this action on the 16th day of December, 1890, for one thousand seven hundred and ninety-nine and $\frac{19}{100}$ dollars and from the order denying a motion for a new trial herein entered on the 10th day of December, 1890, having been heard at the general term—

Now, on motion of Hirsh & Rasquin, attorneys for the respondent, after hearing Mirabeau L. Towns, Esq., attorney for the appellant Droste, and Henry C. De Witt, Esq., attorney for the appellant Palmer, it is ordered and adjudged that the said judgment and order be, and the same — hereby, affirmed with costs to the respondent.

Ent.

AUGUSTUS VAN WYCK, *J. C. C.*

61 City Court of Brooklyn.

MARY H. BARRETT, Plaintiff and Respondent,
against
WILLIAM H. PALMER and ADOLPH M. DROSTE, Defendants and Appellants.
Judgment, November 2, 1891.

The appeal from the judgment entered in this action on the 16th day of December, 1890, for one thousand seven hundred ninety-nine and $\frac{19}{100}$ dollars and from the order denying a motion for a new trial herein entered on the 10th day of December, 1890, having been heard at the general term, and the said judgment — said order having been affirmed with costs, and said costs having been adjusted at ninety-four dollars and four cents—

It is now, on motion of Hirsch & Rasquin, attorneys for said respondent, and after hearing Mirabeau L. Towns, Esquire, attorney for the appellant Droste, and Henry C. De Witt, Esquire, attorney for the appellant Palmer, ordered and adjudged that said judgment and order be, and the same hereby are, affirmed with ninety-four dollars and four cents costs to the respondent, and that Mary H. Barrett, the respondent, recover of William H. Palmer and Adolph M. Droste, the defendants and appellants, the sum of ninety-four dollars and four cents costs, and that the respondent have execution therefor.

C. W. THOMAS, *Clerk.*

62 City Court of Brooklyn.

MARY H. BARRETT, Plaintiff and Respondent,
against
WILLIAM H. PALMER and ADOLPH M. DROSTE, Defendants and Appellants.

GENTLEMEN: Please take notice that the defendants and appellants, William H. Palmer and Adolph M. Droste, hereby appeal to the court of appeals from the judgment entered herein on the 2d day of November, 1891, in favor of said plaintiff and respondent and against said defendants and appellants for the sum of ninety-four and $\frac{4}{100}$ dollars and affirming the judgment heretofore entered herein on the 16th day of December, 1890, in favor of the above-named plaintiff and against the defendants herein for the sum of one thousand seven hundred and ninety-nine and $\frac{19}{100}$ dollars and from the order entered herein on the 2d day of November, 1891, affirming the judgment entered herein on the 16th day of December, 1890, and affirming the order herein denying a motion for a new trial made and entered herein on the 10th day of December, 1890.

Yours, &c.,

M. L. TOWNS,
Att'y for Def't and App'l't Droste,
375 *Fulton Street, Brooklyn, N. Y.*
H. C. DE WITT,
Att'y for Def't and App'l't Palmer,
206 *Broadway, New York City.*

To Messrs. Hirsch & Rasquin, att'ys for pl'ff and resp'd't, Thos. Jefferson building, Brooklyn, N. Y.

63 STATE OF NEW YORK, } *ss.:*
City of Brooklyn, County of Kings, }

I, the undersigned, clerk of the city court of Brooklyn (said court being a court of record), do hereby certify that I have compared the foregoing with the original judgment-roll and notice of appeal on file in my office, and that the same is a correct transcript thereof and of the whole of such original.

[SEAL.]

In testimony whereof I have hereunto set my hand and affixed the seal of said court this 12th day of December, 1891.

C. W. THOMAS, *Clerk.*

The City Court of Brooklyn.

MARY H. BARRETT, Respondent,
against
WILLIAM H. PALMER and ADOLPH M. DROSTE, Appellants. } Opinion.

VAN WYCK, *J.:*

The United States Government on October 28, 1884, leased to the city of Brooklyn a certain tract of land for market purposes and known now as the Wallabout market.

The city of Brooklyn, on October 7, 1887, leased a part thereof for the same purpose to the defendant Palmer for the term of two years, with the right to renew the same. Palmer on February —, 1889, leased a part of the premises so let to him to the plain-
64 tiff for the same purpose for the term of two years. Plaintiff took possession thereof and constructed market stands thereupon. It is admitted (fols. 79–142) that the premises in question were a part of the lands which were referred to in Laws of New York, 1853, chapter 355, but there is no evidence to show how the United States Government acquired any title thereto or became the owner thereof.

The act of 1853 simply cedes the jurisdiction of the State over these lands to the United States with certain reservations. It does not cede the lands or the title thereto.

The defendants in April, 1889, ejected plaintiff, who had paid the rent up to July, 1889, from the premises, converted her personal property, and have kept possession thereof ever since.

This action is brought to recover damages for such wrongs. The jury rendered a verdict for one thousand five hundred and twenty dollars, and from the judgment entered thereupon an order denying a new *jury* the defendants appeal.

It is urged that the court erred in permitting the *trial* to consider in estimating damages loss of possession of premises after *after* October 9, 1889, the date of expiration of Palmer's lease. There is no exception that raised such question, and one of the defendants requested the court to take in consideration loss of possession for a period of thirteen months following that date (fol. 158). To assume that there was such an exception taken it would avail the defendant- nothing, for this lease to Palmer gave him the right of renewal, and Droste, as assignee, with notice of plaintiff's rights, already actually received such renewal from the city.

The one exception called to our attention that we deem necessary to further consider is that this court has no jurisdiction of this case or action, because the acts of trespass complained of occurred upon territory over which chap. 355, Laws of 1853 of New York, ceded

jurisdiction to the United States. Article 1, section 8, U.
65 S. Constitution, is invoked to sustain the contention; it provides "that Congress shall have power to exercise exclusive legislation in all cases * * * over all places purchased by consent of the legislature of the State in which the same shall be for the erection of forts, magazines, arsenals, dock yards, and other needful buildings." There is nothing to show that these lands were purchased by the United States, and it has been expressly held if they were not however else were they acquired.

This constitutional provision does not apply (Chicago P. R. Co. *v.* McGlinn, 114 U. S. R., 542; Fort Leavenworth R. R. Co. *v.* Lowe, *id.*, 525). In these cases the court also decides that if the lands are not so acquired by the United States the following general principle will apply; that when legislative power over territory is transferred by one sovereign to another, the then existing laws of the property "continue in full force (till abrogated by Congress) * * * to so much thereof as is not used by the United States for its forts, buildings, and other needful purposes of the Federal Government."

The lands leased to the city of Brooklyn are not used for any such purposes and Congress has not abrogated the laws of the State in this case. Jurisdiction of this cause of action has not been given to either United States circuit or district court. (Foster's Federal Practice. 1890, p. 21, sec. 15; p. 34, sec. 25.)

This plaintiff cannot appeal for the relief to any other tribunal than the State court. It is further held that reservations are full in said act ceding jurisdiction to the United States over lands acquired otherwise than by purchase with the consent of the legislature. It does not appear that these lands were so acquired. Section 4 of chap. 355, laws 1855, reserves to the State jurisdiction if the premises are not used for the purposes for which jurisdiction is
66 ceded. Section 1 recites the section to be for "the uses and purposes of a navy yard and a naval hospital." The lands in question in this action have been let expressly to the city of Brooklyn for market purposes.

For this reason we have concluded that this court has jurisdiction of this cause of action. We think the judgment ought to be affirmed, with costs.

(S'g'd) AUGUSTUS VAN WYCK,
Judge City Court of Brooklyn.

I concur.

W. J. OSBORNE, *J. C. C.*

66½ Court of Appeals.

STATE OF NEW YORK, *ss:*

Pleas in the court of appeals held at the capitol, in the city of Albany, on the 4th day of October, in the year of our Lord one thousand eight hundred and ninety-two, before the judges of said court.

Witness the Hon. Robert Earl, chief judge, presiding.

GORHAM PARKS, *Clerk.*

Remittitur, October 6th, 1892.

MARY H. BARRETT, Respondent,
ag'st
WILLIAM H. PALMER & Another, Appellants.

Be it remembered that on the 24th day of December, in the year of our Lord one thousand eight hundred and ninety-one, William H. Palmer and another, the appellants in this action, came here into the court of appeals, by M. L. Towns and H. C. De Witt, their attorneys, and filed in the said court a notice of appeal and return thereto from the judgment of the general term of the city court of Brooklyn, and Mary H. Barrett, the respondent in said
67 action, afterwards appeared in said court of appeals, by Hirsh & Rasquin, her attorneys; which said notice of appeal and the return thereto, filed as aforesaid, are hereunto annexed. Whereupon the said court of appeals, having heard this cause argued by Messrs. M. L. Towns & Henry C. De Witt, of counsel for the appellants, and by Mr. Hugo Hirsh, of counsel for the respondent, and after due deliberation had thereon, did order and adjudge that the judgment of the city court of Brooklyn, appealed from in this action, be in all things affirmed; and it was further ordered and adjudged that the respondent recover against the appellants costs of appeal to this court; and it was also further ordered that the record aforesaid and the proceedings in this court be remitted to the said city court of Brooklyn, there to be proceeded on according to law. Therefore it is considered that the said judgment be in all things affirmed, with costs as aforesaid, and stand in full force, strength, and effect.

68 And hereupon as well the notice of appeal and return thereto aforesaid as the judgment of the court of appeals aforesaid by them given in the premises are by the said court of appeals remitted into the city court of Brooklyn before the justices thereof, according to the form of the statute in such case made and provided, to be enforced according to law, and which record now remains in the said city court of Brooklyn before the justices thereof, &c.

GORHAM PARKS,
Clerk of the Court of Appeals of the State of New York.

COURT OF APPEALS, CLERK'S OFFICE,
ALBANY, *October 6th*, 1892.

I hereby certify that the preceding record contains a correct transcript of the proceedings in said action in the court of appeals, with the papers originally filed therein attached thereto.

[SEAL] GORHAM PARKS, *Clerk.*

Copy.

69 The City Court of Brooklyn.

MARY H. BARRETT, Plaintiff and Respondent,
against
WILLIAM H. PALMER & ADOLPH M. DROSTE, Defendants and Appellants.

SIRS: Please to take notice that upon the remittitur herein from the court of appeals, duly filed in the office of the clerk of the city court of Brooklyn on the 10th day of October, 1892, wherein the judgment of the general term of the city court of Brooklyn herein is affirmed, we shall apply to this court at a special term thereof to be held at the county court-house, in the city of Brooklyn, on the 19th day of October, 1892, at 10 o'clock in the forenoon, or as soon thereafter as counsel can be heard, for an order directing that the judgment of the court of appeals be made the judgment of this court, and for such other judgment, order, or relief as may be just and for the costs of this motion.

Dated October 11th, 1892.

Yours, &c., HIRSH & RASQUIN,
Att'ys for Respondent, 4 & 5 *Court Square, Brooklyn, N. Y.*

To H. C. De Witt, Esq., att'y for appellant Palmer; M. L. Towns, Esq., att'y for appellant Droste.

70 [Endorsed:] City court of Brooklyn. Mary H. Barrett, plaintiff and respondent, ag'st William H. Palmer *et al.*, defendants and appellants. Notice of motion. Hirsh & Rasquin, attorneys for pl'ff & resp'd't, 4 & 5 Court square, Brooklyn, N. Y. To —— ——, attorney for —.

Due service of a copy of the within notice of motion is hereby admitted this 11th day of October, 1892.

M. L. TOWNS,
Attorney for App'l'nt Droste.
H. C. DE WITT,
Att'y for App'l'nt Palmer.

SIR: Please to take notice that the —, of which the within is a a copy, was duly entered in the office of the clerk of the — on the — day of ——, 189–.

Dated Brooklyn, ——, 189–.

Yours, &c., HIRSH & RASQUIN,
Attorneys for —, 4 & 5 *Court Square, Brooklyn.*

To —— ——, attorney for —.

71 At a special term of the city court of Brooklyn, held at the county court house, in the city of Brooklyn, on the 19th day of October, 1892.

Present: Hon. William J. Osborne, judge.

MARY H. BARRETT, Plaintiff and Respondent,
against
WILLIAM H. PALMER and ADOLPH M. DROSTE, Defendants and Appellants.

William H. Palmer and Adolph M. Droste, the above-named defendants and appellants, having appealed to the court of appeals from the judgment of the general term of this court herein, and said court of appeals having affirmed said judgment, and a motion having been made herein to make the judgment of the court of appeals the judgment of this court:

Now, on reading and filing the remittitur from the said court of appeals, and on motion of Hirsh & Rasquin, the attorneys for the respondent, it is—

Ordered that the judgment of the court of appeals herein affirming the judgment of the general term of this court be, and the same hereby is, made the judgment of this court, and that the respondent have execution thereon.

Enter-. W. J. O.

Granted.

J. P. H., *Clerk.*

72 [Endorsed:] City court of Brooklyn. Mary H. Barrett, plaintiff and respondent, ag'st William H. Palmer *et al.*, defendants and appellants. Order on remittitur. Hirsh & Rasquin, attorneys for pl'ff, resp'nd't, 4 & 5 Court square, Brooklyn, N. Y. To —— ——, attorney for —. Filed Oct. 19, 1892.

Due service of a copy of the within — is hereby admitted this — day of ——, 189–.

—— ——,
Attorney for —.

SIR: Please to take notice that the —, of which the within is a copy, was duly entered in the office of the clerk of the — on the — day of ——, 189–.

Dated Brooklyn, ——, 189–.

Yours, &c., HIRSH & RASQUIN,
Attorneys for —, 4 & 5 Court Square, Brooklyn.

To —— ——, attorney for —.

73 The City Court of Brooklyn.

MARY H. BARRETT, Plaintiff and Respondent,
against
WILLIAM H. PALMER and ADOLPH M. DROSTE, Defendants and Appellants. } Judgment. October 22nd, 1892.

The appeal from the judgment of the general term of the city court of Brooklyn, entered in this action on the 2nd day of November, 1891, affirming the judgment theretofore entered in this action in favor of the plaintiff and against the defendants on the 16th day of December, 1890, for one thousand seven hundred and ninety-nine and $\frac{19}{100}$ dollars, and from the order denying a motion for a new trial herein entered on the 10th day of December, 1890, having been heard before the court of appeals and the same having been affirmed and the judgment of the court of appeals having been made the judgment of this court, now, on motion of Hirsh & Rasquin, attorneys for the respondent, it is—

Adjudged that said judgment and order be, and the same hereby are, affirmed, and that Mary H. Barrett, the plaintiff and respondent, recover of William H. Palmer and Adolph M. Droste, the defendants and appellants, the sum of one hundred and seven $\frac{34}{100}$ dollars costs.

JOHN P. HUDSON, *Clerk.*

74 [Endorsed:] City of Brooklyn. Mary H. Barrett, plaintiff and respondent, ag'st William H. Palmer *et al.*, defendants and appellants. Judgment-roll. Hirst & Rasquin, attorneys for plaintiff, respondent, 4 & 5 Court square, Brooklyn, N. Y. To —— ——, attorneys for —. Filed Oct. 22, 1892, at 10.20 a. m.

Due service of a copy of the within — is hereby admitted this — day of ——, 189–.

—— ——,
Attorney for —.

SIR: Please to take notice that the —, of which the within is a copy, was duly entered in the office of the clerk of the — on the — day of ——, 189–.

Dated Brooklyn, ——, 189–.

Yours, &c., HIRSH & RASQUIN,
Attorneys for —, 4 & 5 Court Square, Brooklyn.

To —— ——, attorney for —.

75 Court of Appeals.

MARY H. BARRETT, Resp't,
v.
WILLIAM H. PALMER *et al.*, App'l'ts.

OCT. 4TH, 1892.

M. L. Towns & Henry C. De Witt, for app'ts; Hugo Hirsch, for resp't.

O'BRIEN, *J.*:

The plaintiff recovered a verdict against the defendant in action, alleging a trespass. The facts are undisputed that in February, 1889, the defendant Palmer leased to the plaintiff certain booths or market stands in the Wallabout market, Brooklyn, for two years, and that the plaintiff had paid to him the rent reserved by the lease up to July, 1889; that in April, 1889, the defendants, acting together, without right took possession of the stands, ejected the plaintiff therefrom, and destroyed or converted to their own use certain fixtures and other property and have since excluded the plaintiff from possession. There can be no doubt that the jurisdiction of the city court of Brooklyn, where the trial was had, extends to actions of trespass such as this (Code, secs. 263, 3343). The only question raised at the trial that is now open for review would apply to any other State court as well as to the one in which the trial took place. The *locus in quo* was originally a part of the Brooklyn navy yard, jurisdiction of which had been ceded to the United States by chapter 355 of the Laws of 1853. The Federal authorities subsequently leased a part of the land acquired under this act to the city of
76 Brooklyn, or at least permitted the city to use it for that purpose. The authorities of the city leased several market stands to the defendant Palmer, and he sublet some of them to the plaintiff. At the close of the evidence the counsel moved to dismiss the complaint on the ground that the trespass complained of was on territory or reservation belonging to the United States and that the court had no jurisdiction of the action. This motion was denied and the defendants excepted. The verdict of the jury was $1,520, and while the general term might very properly have exercised its power to reduce it we cannot. There was evidence for the consideration of the jury, and under such circumstances this court will not attempt to revise their action.

There can be no doubt that an action of prespass *quare clausum frgit* is local in its character, and the courts of this State have no jurisdiction when such tre-pass is committed upon the lands in another State. (Dodge *vs.* Colby, 108 N. Y., 445; Cragin *vs.* Lowell, 88 *id.*, 258; American Union Tel. Co. *vs.* Middleton, 80 *id.*, 408.)

The jurisdiction of a superior city court is always presumed (Code, sec. 266), and by subdivision three of — 263 of the Code the city court of Brooklyn has jurisdiction of all such actions as this, where the real property is situated within the city or where the defendant is a

resident of the city or where the summons is personally served upon the defendant therein. It is certain that all these conditions exist in this case. The contention of the learned counsel for the defendant must therefore rest upon the proposition that the State has no power to confer jurisdiction upon its courts to redress injuries of this character when committed upon lands acquired by or ceded to the United States. The power of the Federal Government to
77 acquire lands within a State for governmental purposes cannot be so exercised as to dismember a State and separate a part of its territory from its jurisdiction. When the lands are acquired by the exercise of the power of eminent domain the United States becomes simply an ordinary proprietor, and the jurisdiction and authority of the State remain unchanged except so far as their use for the purpose of executing the powers of the General Government necessarily remove them from the domain of the State authority; but it has been held that the State may cede to the General Government political jurisdiction over such lands, and then Congress has the power to legislate in regard to them. We are not disposed to hold that even then the judicial power of the courts of this State would be powerless to redress private injuries committed thereon, or that the injured party would be compelled to seek justice in some other jurisdiction. The State did cede such political authority to the Federal Government with respect to the lands in question, with certain reservations. Congress has not, however, made any new regulations touching the administration of justice in civil cases with respect to actions arising therein, and until some such regulations have been made the municipal law of the State for the protection and enforcement of private rights through the courts remains unchanged. (C. & P. R. Co. *vs.* McGlinn, 114 U. S., 542; F. L. R. Co. *vs.* Lowe, *Id.*, 525.)

The cession of territory by one sovereignty to another does not abrogate the laws in force at the time of the cession for the administration of private justice. Not in the least until the new sovereignty has abrogated them to do such laws cease to operate, unless possibly so far as they may be in conflict with the political
78 character, institutions, and constitution of the government to which the territory is ceded. Mr. Justice Field, in the Supreme Court of the United States, in the case of The C. P. R. Co. *vs.* McGlinn (*supra*), stated the rule of international law on this subject as follows: "It is a general rule of public law recognized and acted upon by the United States that whenever political jurisdiction and legislative power over any territory are transferred from one nation or sovereign to another the municipal laws of the country—that is, the laws which are intended for the protection of private rights—continue in force until abrogated by the new government or sovereign."

As nothing has been done by Congress to displace the laws of this State and the jurisdiction of its courts in regard to private rights and remedies with respect to the lands ceded for the purpose

of a navy yard in Brooklyn, these matters remain unaffected by the act of cession. The judgment should therefore be affirmed.

"All concur."

A copy.

H. E. SICKLES, *Reporter*,
Per —— ——.

79 [Endorsed:] E. 18, 549. Barrett *v.* Palmer. Opinion. O'Brien, Jr. Filed Nov. 2, 1892.

80 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judges of the city court of Brooklyn, Kings county, in the State of New York, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said city court, before you or some of you, and which has been affirmed by the court of appeals of the State of New York, being the highest court of law or equity of the said State in which a decision could be had in said suit between William H. Palmer and Adolph M. Droste, plaintiffs in error, and Mary H. Barrett, defendant in error (the remittitur of said court of appeals being filed in the clerk's office of said city court of Brooklyn), wherein was drawn in question the validity of a statute of or an authority exercised under said State on the ground of their being repugnant to the Constitution or laws of the United States and the decision was in favor of such their validity, and wherein was drawn in question the construction of a clause of the Constitution and statutes of the United States and the decision was against the title, right, privilege, and exemption specially set up or claimed under such clause of the said Constitution and statutes, a manifest error hath happened, to the great damage of the said William H. Palmer and Adolph M. Droste, plaintiffs in error, as is said and appears by their complaint, we, being willing that such error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the justices of the Supreme Court of the United States, at the Capitol, in the city of Washington, together with this writ, so that you have the same at the said place, before the justices aforesaid, on the 30th day of November, 1892, that, the record and proceedings aforesaid being inspected, the said justices of the Supreme Court may cause further to be done therein to correct that error what of right and according to the law and custom of the United States ought to be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 31st day of October, in the year of our Lord one thousand eight hundred and ninety-two, and of the Independence of the United States the one hundred and seventeenth.

Seal of the Supreme Court of the United States.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

The foregoing writ is hereby allowed and shall operate as a supersedeas.

Oct. 31, 1892.

SAM'L BLATCHFORD,
Associate Justice of the Supreme Court of the United States.

81 [Endorsed:] E. 18, 546. Supreme Court of the United States. William H. Palmer and Adolph M. Droste, plaintiffs in error, *vs.* Mary H. Barrett, defendant in error. Writ of error. Henry C. De Witt, 206 Broadway, New York city; M. L. Towns, 375 Fulton street, city of Brooklyn, attorneys for plaintiffs in error. Due service of a copy of the within writ of error is hereby admitted this — day of ——, 189–. —— ——, attorney for defendant in error. Filed Nov. 1, 1892.

UNITED STATES OF AMERICA, *Southern District of New York*, } *ss*:

I, John P. Hudson, clerk of the city court of Brooklyn, by virtue of the foregoing writ of error and in obedience thereto, do hereby certify that the *following* pages, numbered from 1 to 78, inclusive, contain a true and complete transcript of the record and proceedings had in said court in the cause of William H. Palmer & Adolph M. Droste, plaintiffs in error, against Mary H. Barrett, defendant in error, as the same remain of record and on file in said office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of Brooklyn, in the State of New York, this — day of November, in the year of our Lord one thousand eight hundred and ninety-two, and of the Independence of the United States the one hundred and seventeenth.

Seal of the City Court of Brooklyn, N. Y.

JOHN P. HUDSON, *Clerk.*

Endorsed on cover: Case No. 15,218. New York, city court of Brooklyn. Term No., 1248. William H. Palmer and Adolph M. Droste, plaintiffs in error, *vs.* Mary H. Barrett. Filed December 1, 1892.

Office Supreme Court U. S.
FILED.
JAN 23 1893
JAMES H. McKENNEY,
CLERK.

RECORD CASE No. 15,218.

U. S. SUPREME COURT.

October Term 1892
Term No. 1248.

WILLIAM H. PALMER AND ADOLPH M. DROSTE,
Plaintiffs in Error,

against

MARY H. BARRETT,
Defendant in Error.

Brief on behalf of Plaintiffs in Error.

H. E. TREMAIN,
M. L. TOWNS,
Attorneys for Plaintiffs in Error.

HUGO HIRSH,
HENRY S. RASQUIN,
Attorneys for Defendant in Error.

Office Supreme Court U. S.
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RECORD CASE No. 15,218.

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WILLIAM H. PALMER AND ADOLPH M. DROSTE,
Plaintiffs in Error,

against

MARY H. BARRETT,
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Brief on behalf of Plaintiffs in Error.

H. E. TREMAIN,
M. L. TOWNS,
Attorneys for Plaintiffs in Error.

HUGO HIRSH,
HENRY S. RASQUIN,
Attorneys for Defendant in Error.

Supreme Court of the United States.

WILLIAM H. PALMER and
ADOLPH M. DROSTE,
Plaintiffs in Error,

AGAINST

MARY H. BARRETT,
Defendant in Error.

Brief of Plaintiffs in Error to oppose Motion to Dismiss.

Statement.

The action was brought in the City Court of Brooklyn by Mary H. Barrett, the defendant in error, against William H. Palmer and Adolph M. Droste, the plaintiffs in error, to secure damages for forcible entry and detainer. On failure to show force, the trial proceeded as for trespass, *quare clausum fregit* (Record, p. 8, testimony of John Tierney; p. 13, testimony of Henry Bernstein; p. 24, testimony of Wm. H. Palmer),—a local action involving the title to land (Opinion of Court of Appeals, Record, page 44).

It appearing on the trial that the trespass was charged to have taken place on lands of the United States, a part of the Brooklyn Navy Yard, included in land described in Chapter 355 of Laws of New York, passed 1855, ceding jurisdiction of the State to the United States and substantially ratifying and consenting to purchase of the land by the United States in pursuance of Article 1, Section 8, of

the Constitution of the United States, (*Ib.*, 12; testimony of Palmer, page 15; Exhibit A, page 28; Exhibit A, fol. 45; Added Exhibit, page 35; offered in evidence, page 22. Admission by attorney for defendant in error as to *locus quo*, page 22), the plaintiffs in error moved to dismiss as follows: "Because it appears that the acts of trespass complained of, if committed at all by the defendants (plaintiffs in error), * * * were committed upon territory outside of the State of New York and consequently outside the City of Brooklyn, viz., * * * upon United States territory and reservation belonging to the United States used for the purpose of navy yards, docks, marine hospitals, &c., and upon the ground that it appears upon all the evidence now that this Court has not jurisdiction of the subject matter of this action;" which motion was denied, and the respective plaintiffs in error excepted (*Ib.*, p. 23, fol. 37).

The material parts of Chapter 355 of the Laws of New York, passed June 17, 1853, entitled "An Act to vest," are hereinafter inserted under Point I.

Other defenses of plaintiffs in error were overruled, and the jury directed to assess damages against them as trespassers and wrong-doers (see Judge's charge, *Ib.*, p. 24, fol. 38), the jury finding in the sum of $1,520 (fol. 41), which, plaintiffs in error, in this case where at most but mere technical trespass and nominal damages were shown, complain of as an outrageous amount awarded *without jurisdiction*, from which verdict, appeals were taken to the General Term of the City Court and to the N. Y. Court of Appeals, where the judgment was successively affirmed.

For the purpose of this motion it may be sufficient to state that the questions this writ of error is intended to bring up for review, are whether an *omission* of legislation by Congress would give to State Courts a jurisdiction, not otherwise possessed over U. S. Navy Yard lands, and whether any laws of the State giving jurisdiction to State Courts over these Navy Yard lands of the United States are in conflict with that clause of the U. S. Constitution giving the United States *exclusive* jurisdiction over such territory. These questions are indicated in the OPINION OF

THE COURT OF APPEALS (*Ib.*, p. 44, fol. 76) quoted from as follows:

* * * "At the close of the evidence the counsel moved to dismiss the complaint on the ground that the trespass complained of was on territory or reservation belonging to the United States and that the Court had no jurisdiction of the action. This motion was denied and the defendants excepted. * * *

There can be no doubt that an action of trespass *quare clausum fregit* is local in its character, and the courts of this State have no jurisdiction when such trespass is committed upon the lands in another State (Dodge *vs.* Colby, 108 N. Y., 445; Cragin *vs.* Lowell, 88 *Id.*, 258; American Union Tel. Co. *vs.* Middleton, 80 *Id.*, 408).

* * * The contention of the learned counsel for the defendants must therefore rest upon the proposition that the State has no power to confer jurisdiction upon its courts to redress injuries of this character when committed upon lands acquired by or ceded to the United States. The power of the Federal Government to acquire lands within a State for governmental purposes cannot be so exercised as to dismember a State and separate a part of its territory from its jurisdiction. When the lands are acquired by the exercise of the power of eminent domain, the United States becomes simply an ordinary proprietor, and the jurisdiction and authority of the State remain unchanged except so far as their use for the purpose of executing the powers of the General Government necessarily remove them from the domain of the State authority ; but it has been held that the State may cede to the General Government political jurisdiction over such lands, and then Congress has the power to legislate in regard to them. * * * The State did cede such political authority to the Federal Government, with respect to the lands in question, with certain reservations. Congress has not, however, made any new regulations touching the administration of justice in civil cases with respect to actions arising therein, and until some such regulations have been made the municipal law of the State for the protection

and enforcement of private rights through the courts remains unchanged (C. & P. R. Co. *vs.* McGlinn, 114, U. S., 542; F. L. R. Co. *vs.* Lowe, *Id.*, 525).

* * * Not in the least * * * do such laws cease to operate unless possibly, so far as they may be in *conflict* with the political character, institutions and *constitution* of the government to which the territory is ceded. * * *

As nothing has been done by Congress to displace the laws of this State and the jurisdiction of its courts in regard to private rights and remedies with respect to the lands ceded for the purpose of a navy yard in Brooklyn "those matters remain unaffected by the act of cession." * * *

This opinion is called in question, and this motion to dismiss is resisted because the plaintiffs in error would be defeated in their right to discuss it on the merits before this Court.

The case also presents the further question as to whether in case any reservation or exception in the act of the New York Legislature is thought to apply to the temporary use of part of said lands for a market place, then as to whether said reservation or exception is in conflict with said clause of the United States Constitution.

POINTS.

I.

Plaintiffs in error raised an issue involving a Federal question.

The contention of the plaintiffs in error, upon the trial and both appeals in the Courts below, has always been that this was a local cause of action, trespass *quare clausum fregit*,

(See complaint of defendant in error, Record, page 2), involving title to land and a cause of action arising on United States territory, the "Brooklyn Navy Yard," ad-

mitted to be included in Chapter 355, Laws of the State of New York, passed in 1853,

(See admission of attorney for defendant in error, page 22, fol. 36, also Added Exhibit, p. 35, and Exhibit A, p. 28) which act of the New York Legislature was offered in evidence (*Ib.*, p. 12, fol. 20), ceding jurisdiction over said land and, in effect, consenting to any purchase of same by the General Government, vested in the United States *exclusive* jurisdiction under the United States Constitution, Article 1, Section 8.

Chapter 355, Laws of New York 1853, is entitled

"AN ACT TO VEST IN THE UNITED STATES OF AMERICA JURISDICTION OVER CERTAIN LANDS IN THE CITY OF BROOKLYN AND ADJACENT THERETO."

Passed June 17, 1853.

And the material parts are as follows:

"The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1. The jurisdiction of this State over all lands in and adjacent to the city of Brooklyn, belong to the United States, and used and occupied as a navy yard and naval hospital, and which has not heretofore been ceded to the United States, is hereby ceded to the United States for the uses and purposes of a navy yard and naval hospital, on the condition contained in this act, and according to the plan furnished by the navy department, and bounded as follows: * * *

2. Such jurisdiction is ceded as aforesaid, on the condition that the United States shall pay or cause to be paid to the city of Brooklyn the sum of eleven thousand three hundred and eighty-three dollars and seventy-three cents, with interest from the first day of February, 1852, until paid, being the balance of an assessment now due on a part of said lands for grading and paving Flushing avenue.
* * *

6. The United States may retain such use and jurisdiction as long as the premises described shall be used for the purposes for which jurisdiction is ceded, and no longer. * * * Nor shall the jurisdiction so ceded to the United States impede or prevent the service or execution of any legal process, civil or criminal, under the authority of this state.

5. Nothing in this act contained shall be construed so as to allow the common council of the city of Brooklyn hereafter, to tax or assess any of the lands of the United States for any purpose whatsoever."

Therefore it is claimed the State Courts' exercise of jurisdiction in this cause was in conflict with said clause of the United States Constitution, and on such grounds, it appears by the record (p. 23, fol. 37) plaintiffs in error, upon the trial, moved to dismiss the complaint of defendant in error. The motion was denied, the Court below thereby holding that the jurisdiction of the United States was not *exclusive.*

This Honorable Court will examine the record to see whether a Federal question was raised and decided adversely to the plaintiffs in error.

(Furman *vs.* Nichol, 8 Wall., 44.)

The opinion of the State Court may be examined to see what questions were decided.

(Murdock *vs.* Memphis, 20 Wall., 590.)

"It is not indispensable that it should appear on the record *in totidem verbis,* or by direct and positive statement, that the question was made and the decision given by the Court below on the very points, but that it is sufficient if it is clear from the facts stated by just and necessary inference that the question was made, and that the Court below must, in order to have arrived at the judgment pronounced by it, have come to the very decision."

(Crowell *vs.* Randall, 10 Peters, 391.)

II.

The construction of a clause in the U. S. Constitution was drawn in question and necessarily decided.

On motion of plaintiffs in error to dismiss the complaint in the Court below the only questions raised were, that under the Constitution of the United States, the Court below was without power or jurisdiction to proceed in this cause and no State Constitution or laws could confer such jurisdiction, the jurisdiction of the United States being *exclusive*.

(Record, page 22, fol. 36.
Opinion of Van Wyck, *J.*, *Ib.*, page 38.
" O'Brien, *J.*, *Ib.*, page 44.
U. S. Constitution, Art. 1, Sec. 8.)

The determination of these questions were fundamental, as the jurisdiction of the Court below depended upon the application and construction of such laws and constitution.

In order to sustain the jurisdiction of the Court below these questions were necessarily decided against the right, privilege and exemptions claimed by plaintiffs in error, and in favor of the validity of such State laws; and without such decision no judgment could have been rendered in the Courts below against the plaintiffs in error, in this cause.

(See decision on motion to dismiss, Record, p. 13, fol. 20.
Opinion of Van Wyck, *J.*, *Ib.*, p. 38.
Opinion of O'Brien, *J.*, *Ib.*, p. 45.)

III.

The judgment below could not be made or sustained without deciding the Federal question.

This Honorable Court must not be mislead by the argument of counsel that under the New York Code it may have been decided in this case that the Brooklyn City Court would have extra territorial jurisdiction in this class of cases between residents of the City of Brooklyn. The court of last resort of New York State holds the contrary.

(Opinion of O'Brien, *J.*, in this case.
Record, p. 44, fol. 76.)

Or that the United States had never acquired jurisdiction over the Brooklyn Navy Yard lands under the Constitution of the United States for the reason that the specific purchase by the General Government was not shown on the trial.

(Opinion of Van Wyck, *J.*; Record, page 39; fol. 65.)

The purchase and occupation of these lands by the United States is notorious, and referred to in histories, among which, Stiles' History of Brooklyn, Vol. 1, page 80, gives an account of such a purchase of 40 acres of the Wallabout lands from John Jackson through Francis Childs, a middleman who conveyed to the United States.

The land was purchased and owned by the United States, as appears by recitals in the New York Statutes; Chapter 355, Laws of 1853 (*supra*).

Chapter 181 of Laws of 1833, shows another purchase by the United States with the consent of the State, ceding

jurisdiction over an addition made to this territory, the title and material parts of which statute are as follows:

"AN ACT TO VEST IN THE UNITED STATES OF AMERICA JURISDICTION OVER TWO CERTAIN TRACTS OF LAND IN THE COUNTY OF KINGS."

Passed April 19, 1833.

"1. The jurisdiction of the State of New York is hereby ceded to the United States of America, for the purpose of erecting and maintaining a navy hospital and other necessary edifices and buildings, over all those certain tracts, pieces or parcels of land situate, lying and being in the County of Kings and State of New York, bounded and contained as follows, to wit: All that certain tract, piece or parcel of upland, salt meadow and marsh, bounded as follows: beginning at the corner of the Wallabout bridge road and the road leading to Williamsburgh, and running from thence * * * The tracts of land, the jurisdiction whereof is hereby ceded, being the same which were by an indenture bearing date the first day of July, in the year of our Lord one thousand eight hundred and twenty-four, conveyed by Sarah Schenck, widow of Martin Schenck; Jane Schenck, widow of Jeromus Schenck, Jacob Harris and Ida, his wife, and Isaac Harris and Mary Ann, his wife, all of the County of Kings and State of New York to the Secretary of the Navy, the Secretary of the Treasury, and the Secretary of War for the time being, Commissioners of Navy Hospitals, and to their successors and assigns forever."

Among the many Acts of Congress authorizing, reciting and appropriating money to pay for purchases of these lands, are Acts of Congress, 1883, Chap. 75; 1835, Chap. 47; 1844, Chap. 107; 1849, Chap. 103; 1854, Chap. 268.

Act of Congress, 1853, Chap. 102, appropriates money to pay off liens held by City of Brooklyn on the very land in question, *purchased* by the United States, providing,

that the State of New York shall cede to the United States exclusive jurisdiction, and for settling title to the lands.

This act was followed by the act of the New York Legislature in the same year, 1873, granting and ceding the desired jurisdiction, also providing for the payment of the sum claimed by the City of Brooklyn.

Act of Congress, 1854, Chap. 268, further appropriates money to pay balance due Brooklyn on these lands..

After this action had been commenced Congress authorized the appraisal, survey and sale to the city of Brooklyn of the land in question, Act of Congress, 1890, Chap. 654.

And Brooklyn is about to pay the United States nearly a million of dollars for this land.

It is urged that the opinions of Mr. Justice Field in Chicago and P. R. Co. *vs.* McGlynn, 114 U. S , 542, and Fort Leavenworth R. R. Co. *vs.* Lowe, *Ib.*, 525, indicate that the constitutional provision does not apply in this case, but the difference in the status and history of the lands and the different state of legislation make an entirely different case from that under the Kansas Statute and Reservation only when the case at bar shall come to be considered on the merits.

The Court of Appeals only cite these cases on the subject of international law, but not as authority for their construction or application of the United States Constitution. The question is not so much what is the law in this case as to who is the sovereign ? and, whose courts shall administer ? and whether the City Court of Brooklyn has this extra-territorial power, to determine the title to land, so as to award damages concerning the possession.

The United States having *exclusive* jurisdiction, it is claimed Congress alone can legislate and provide for its own rights as well as the rights and duties of others within that jurisdiction in territories or forts or public vessels, or any other public establishment, and through the Courts of the United States enforce all rights required

for those objects and redress wrongs inflicted within its exclusive jurisdiction,

(Chief Justice Marshall in Cohen *vs.* Virginia, 6 Wheat., 428; also Woodbury, *J.*, in U. S. *vs.* Ames, 9 Law R., 302; U. S. *vs.* Cornell, 2 Mason, 66.)

and the mere circumstance that this power has not been exercised in this instance is inconsequential.

The United States had not abandoned its jurisdiction by ceasing temporarily to use the land for the original purpose. See United States permit to City of Brooklyn, providing that at any time, on notice, City of Brooklyn within thirty days shall vacate and remove everything from land except the property of the United States (Record, p. 35, fol. 58).

This condition was also imposed by the City of Brooklyn upon its sub-licensees.

(Exhibit A, Record, p. 28.
Exhibit D, p. 30.)

No rent was reserved by the United States, or any other consideration received, except the privilege of buying water from Brooklyn at the usual rate. A great naval establishment required water as well as bread and meat, and thus all are secured; and this license to use as a market was no more significant than a license to a suttler in camp, or in a fortress.

Right to object to jurisdiction was not waived by omission to plead it in writing, but was under the New York law and practice properly raised upon the trial;

(Davidsburgh *vs.* Knickerbocker L. Ins. Co., 90 N. Y., 526);

and could be raised at any stage of proceeding upon facts appearing.

(Robinson *vs.* Oceanic Steam Navigation Co., 112 N. Y., 315.)

IV.

The Supreme Court of the United States has jurisdiction to review this case.

V.

The writ of error herein was not sued out for purposes of delay, but to protect the rights of the plaintiffs in error, which they deem have been grossly outraged by the judgment rendered below.

VI.

This motion to dismiss for want of jurisdiction, &c., should be denied, and the cause retained for consideration upon its merits, and an opportunity afforded to the plaintiffs in error to file their main brief on the merits, with full specifications of assigned errors.

VII.

All of which is respectfully submitted.

H. E. TREMAIN,
M. L. TOWNS,
Attorneys for Plaintiffs in Error.

194

Office Supreme Court U. S.
FILED.
MAR 30 1896
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CLERK

RECORD CASE No. 15,218.

U. S. SUPREME COURT.

WILLIAM H. PALMER AND ADOLPH M. DROSTE,
Plaintiffs in Error,

AGAINST

MARY H. BARRETT,
Defendant in Error.

Brief on Behalf of Plaintiffs in Error.

H. E. TREMAIN,
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Supreme Court of the United States.

WILLIAM H. PALMER and
ADOLPH M. DROSTE,
Plaintiffs in Error,

AGAINST

MARY H. BARRETT,
Defendant in Error.

Brief of Plaintiffs in Error.

STATEMENT.

The action was brought in the City Court of Brooklyn by Mary H. Barrett, the defendant in error, against William H. Palmer and Adolph M. Droste, the plaintiffs in error, to secure damages for forcible entry and detainer. On failure to show force, the trial proceeded as for trespass, *quare clausum fregit* (Record, p. 8, testimony of John Tierney; p. 13, testimony of Henry Bernstein; p. 24, testimony of Wm. H. Palmer),—a local action involving the title to land (Opinion of Court of Appeals, Record, page 44).

It appearing on the trial that the trespass was charged to have taken place on lands of the United States, a part of the Brooklyn Navy Yard, included in land described in Chapter 355 of Laws of New York, passed 1853, ceding jurisdiction of the State to the United States and substantially ratifying and consenting to purchase of the land by the United States in

pursuance of Article 1, Section 8, of the Constitution of the United States. (*Ib.*, 12; testimony of Palmer, page 15; Exhibit A, page 28; Exhibit A, fol. 45; Added Exhibit, page 35; offered in evidence, page 22. Admission by attorney for defendant in error as to *locus quo*, page 22), the plaintiffs in error moved to dismiss as follows: "Because it appears that the acts of trespass complained of, if committed at all by the defendants (plaintiffs in error), * * * were committed upon territory outside of the State of New York and consequently outside the City of Brooklyn, viz., * * * upon United States territory and reservation belonging to the United States used for the purpose of navy yards, docks, marine hospitals, &c., and upon the ground that it appears upon all the evidence now that this Court has not jurisdiction of the subject matter of this action;" which motion was denied, and the respective plaintiffs in error excepted (*Ib.*, p. 23, fol. 37).

The material parts of Chapter 355 of the Laws of New York, passed June 17, 1853, entitled "An Act to vest, &c.," are hereinafter inserted under Point I.

Other defenses of plaintiffs in error were overruled, and the jury directed to assess damages against them as trespassers and wrong-doers (see Judge's charge, *Ib.*, p. 24, fol 38), the jury finding in the sum of $1,520 (fol. 41), which, plaintiffs in error, in this case, where, at most but mere technical trespass and nominal damages were shown, complain of as an outrageous amount awarded *without jurisdiction*, from which verdict, appeals were taken to the General Term of the City Court of Brooklyn and to the N. Y. Court of Appeals, where the judgment was successively affirmed.

For the purpose of the defendant, it may be sufficient to state that the questions this writ of error is intended to bring up for review, are whether an *omission* of legislation by Congress would give to State Courts a jurisdiction, not otherwise possessed over U. S. Navy Yard

lands, and whether any laws of the State giving jurisdiction to State Courts over these Navy Yard lands of the United States are in conflict with that clause of the U. S. Constitution giving the United States *exclusive* jurisdiction over such territory. These questions are inditated in the OPINION OF THE COURT OF APPEALS (*Ib.*, p. 44, fol. 76) quoted from as follows:

* * * "At the close of the evidence the counsel moved to dismiss the complaint on the ground that the trespass complained of was on territory or reservation belonging to the United States and that the Court had no jurisdiction of the action. This motion was denied and the defendants excepted. * * *

There can be no doubt that an action of trespass *quare clausum fregit* is local in its character, and the courts of this State have no jurisdiction when such trespass is committed upon the lands in another State (Dodge *vs.* Colby, 108 N. Y., 445; Cragin *vs.* Lowell, 88 *Id.*, 258; American Union Tel. Co. *vs.* Middleton, 80 *Id.*, 408.)

* * * The contention of the learned counsel for the defendants must therefore rest upon the proposition that the State has no power to confer jurisdiction upon its courts to redress injuries of this character when committed upon lands acquired by or ceded to the United States. The power of the Federal Government to acquire lands within a State for governmental purposes cannot be so exercised as to dismember a State and separate a part of its territory from its jurisdiction. When the lands are acquired by the exercise of the power of eminent domain, the United States becomes simply an ordinary proprietor, and the jurisdiction and authority of the State remain unchanged except so far as their use for the purpose of executing the powers of the General Goverhment neces-arily remove them from the domain of the State authority; but it has been held that the State may cede to the General Government political jurisdiction over such lands, and the Congress

has the power to legislate in regard to them. * * * The State did cede such political authority to the Federal Government, with respect to the lands in question with certain reservations. Congress has not, however, made any new regulations touching the administration of justice in civil cases with respect to actions arising therein, and until some such regulations have been made the municipal law of the State for the protection and enforcement of private rights through the courts remains unchanged (C. & P. R. Co. *vs.* McGlinn, 114, U. S., 542; F. L. R. Co. *vs.* Lowe, *Id.*, 525).

* * * Not in the least * * * do such laws cease to operate unless possibly, so far as they may be in *conflict* with the political character, institutions and *constitution* of the government to which the territory is ceded. * * * *

As nothing has been done by Congress to displace the laws of this State and the jurisdiction of its courts in regard to private rights and remedies with respect to lands ceded for the purpose of a navy yard in Brooklyn "those matters remain unaffected by the act of cession." * * *

This opinion is called in question.

The case also presents the further question as to whether in case any reservation or exception in the act of the New York Legislature is thought to apply to the temporary use of part of said lands for a market place, then as to whether said reservation or exception is in conflict with said clause of the United States Constitution.

For Assignments of Error.

1. Plaintiffs action being tresspass *quari clausum fregit* concerning lands and territory of the United States, the court below being a local state court had no jurisdiction to try the cause and should have dismissed the same.

2. The court below erred in holding it had jurisdiction to determine this cause of action arising within the territory belonging to the Brooklyn Navy Yard ceded to the United States by the State of New York.

3. That the court below erred in holding that the United States had not exclusive jurisdiction over lands of the Brooklyn Navy Yard.

4. That the court below erred in holding that Section 8, of Article I of the United States Constitution did not apply to the Navy Yard lands in Brooklyn, and in holding that the state courts had retained their jurisdiction over the territory in question until Congress had by some special legislation displaced them.

POINTS

I

Plaintiffs in error raised an issue involving a Federal question.

The contention of the plaintiffs in error, upon the trial and both appeals in the Courts below, has always been that this was a local cause of action, trespass *quare clausum fregit*,

(See complaint of defendant in error, Record, page), involving title to land and a cause of action arising on United States territory, the "Brooklyn Navy Yard," admitted to be included in Chapter 355, Laws of the State of New York, passed in 1853,

(See admission of attorney for defendant in error, page 22, fol 36, also Added Exhibit, p. 35 and Exhibit A, p. 28) which act of the New York Legislature was offered in evidence (*Ib.* p. 12, fol. 20), ceding jurisdiction over said land and, in effect, consenting to any purchase of same by the General Government, thus vesting in the United States *exclusive* jurisdiction under the United States Constitution, Article 1, Section 8.

Chapter 355, Laws of New York 1853, is entitled

"AN ACT TO VEST IN THE UNITED STATES OF AMERICA JURISDICTION OVER CERTA N LANDS IN THE CITY OF BROOKLYN AND ADJACENT THERETO."

Passed June 17, 1853.

And the material parts are as follows :

"The People of the State of New York, represented in Senate and Assembly, do enact as follows :

1. The jurisdiction of this State over all lands in and adjacent to the city of Brooklyn, belong to the United States, and used and occupied as a navy yard and naval hospital, and which has not heretofore been ceded to the United States, is hereby cededed to the United States for the uses and purposes of a navy yard and naval hospital, on the condition contained in this act, and according to the plan furnishsd by the navy department, and bounded as follows : * * *

2. Such jurisdiction is ceded as aforesaid, on the condition that the United States shall pay or cause to be paid to the city of Brooklyn the sum of eleven thousand three hundred and eighty-three dollars and seventy-three cents, with interest from the first day of February, 1852, until paid, being the balance of an assessment now due on a part of said lands for grading and paving Flushing avenue.

6. The United States may retain such use and jurisdiction as long as the premises described shall be used for the purposes for which jurisdiction is ceded, and no longer. * * * Nor shall the jurisdiction so ceded to the United States impede or prevent the service or execution of any legal process, civil or criminal, under the authority of this state.

5. Nothing in this act contained shall be construed so

as to allow the common council of the city of Brooklyn, hereafter, to tax or assess any of the lands of the United States for any purpose whatsoever."

Therefore it is claimed the State Courts' exercise of jurisdiction in this cause was in conflict with said clause of the United States Constitution, and on such grounds, it appears by the record (p. 23, fol. 37) plaintiffs in error, upon the trial, moved to dismiss the complaint of defendant in error, The motion was denied. the Court below thereby holding that the jurisdiction of the United States was not *exclusive*.

This Honorable Court will examine the record to see whether a Federal question was raised and decided adversely to the plaintiffs in error.

(Furman *vs.* Nichol, 8 Wall., 44.)

The opinion of the State Court may be examined to see what questions were decided.

(Murdock *vs.* Memphis, 20 Wall, 590.)

"It is not indispensable that it should appear on the record *in totidem verbis*, or by direct and positive statement, that the question was made and the decision given by the Court below on the very points, but that it is sufficient if it is clear from the facts stated by just and necessary inference that the question was made, and that the Court below must, in order to have arrived at the judgment pronounced by it, have come to the very decision."

(Crowell *vs.* Randall, 10 Peters, 391.)

II.

The construction of a clause in the U. S. Constitution was drawn in question necessarily decided, and in violation of the U. S. Constitution.

On motion of plaintiffs in error to dismiss the com-

plaint in the Court below the only questions raised were that under the Constitution of the United States, the Court below was without power or jurisdiction to proceed in this cause and no State Constitution or laws could confer such jurisdiction, the jurisdiction of the United States being *exclusive*.

(Record, page 22, fol. 36.
Opinion of Van Wyck, *J.*, *Ib.*, page 38.
" O'Brien, *J.*, *Ib.*, page 44.
U. S. Constitution, Art 1, Sec. 8.)

The determination of these questions were fundamental, as the jurisdiction of the Court below depended upon the application and construction of such laws and constitution.

In order to sustain the jurisdiction of the Court below these questions were necessarily decided against the right, privilege and exemptions claimed by plaintiffs in error, and in favor of the validity of such State laws; and without such decision no judgment could have been rendered in the Courts below against the plaintiffs in error, in this cause.

(See decision on motion to dismiss, Record, p. 13, fol. 20.
Opinion of Van Wyck, *J.*, *Ib.*, p. 38.
Opinion of O'Brien, *J.*, *Ib.*, p. 45.)

III.

This action being for trespass quare clausum fregit committee upon the United States territory, the State courts had no jurisdiction to try the cause.

This Honorable Court must not be mislead by the argument of counsel that under the New York Code it may have been decided in this case that the Brooklyn

City Court would have extra territorial jurisdiction in this class of cases between residents of the City of Brooklyn. The court of last resort of New York State holds the contrary.

(Opinion of O'Brien, *J.*, in this case. Record, p. 44, fol. 76.)

Or that the United States had never acquired jurisdiction over the Brooklyn Navy Yard lands under the Constitution of the United States for the reason that the specific purchase by the General Government was not shown on the trial.

(Opinion of Van Wyck, *J.*; Record, page 39, fol. 65.)

The purchase and occupation of these lands by the United States is notorious, and referred to in histories, among which, Stiles' History of Brooklyn, Vol. 1, page 80, gives an account of such a purchase of 40 acres of the Wallabout lands from John Jackson through Francis Childs, a middleman who conveyed to the United States.

The land was purchased and owned by the United States, as appears by recitals in the New York Statute;

Chapter 355, Laws of 1853 (*supra*).

Chapter 181 of Laws of 1833, shows another purchase by the United States with the consent of the State, ceding jurisdiction over an addition made to this territory, the title and material parts of which statute are as follows:

"AN ACT TO VEST IN THE UNITED STATES OF AMERICA JURISDICTION OVER TWO CERTAIN TRACTS OF LAND IN THE COUNTY OF KINGS."

Passed April 19, 1833.

"1. The jurisdiction of the State of New-York is hereby ceded to the United States of America, for the purpose of erecting and maintaining a navy hospital and other necessary edifices and buildings, over all those certain tracts, pieces or parcels of land situate, lying and being in the County of Kings and State of New York, bounded and contained as follows, to wit: All that certain tract, piece or parcel of upland, s lt meadow and marsh, bounded as follows: beginning at the corner of the Wallabout bridge road and the road leading to Williamsburgh, and running from thence * * * The tracts of land, the jurisdiction whereof is hereby ceded, being the same which were by an indenture bearing date the first day of July, in the year of our Lord one thousand eight hundred and twenty-four, conveyed by Sarah Schenck, widow of Martin Schenck; Jane Schenck, widow of Jeromus Schenck, Jacob Harris and Ida, his wife, and Isaac Harris and Mary Ann, his wife, all of the County of Kings and State of New York to the Secretary of the Navy, the Secretary of the Treasury, and the Secretary of War for the time being, Commissioners of Navy Hospitals, and to their successors and assigns forever."

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It is urged that the opinions of Mr. Justice Field in Chicago and P. R. Co. *vs.* McGlynn, 114 U. S., 542, and Fort Leavenworth R. R. Co. *vs.* Lowe, *Ib.*, 525, indicate that the constitutional provision does not apply in this case, but the difference in the status and history of the lands and the different state of legislation make an entirely different case from that under the Kansas Statute and Reservation.

The Court of Appeals only cite these cases on the subject of international law, but not as authority for their construction or application of the United States Constitution. The question is not so much what is the law in this case as to who is the sovereign? and, whose courts shall administer? and whether the City Court of Brooklyn has this extra-territorial power, to determine the title to land, so as to award damages concerning the possession.

The United States having *exclusive* jurisdiction, it is claimed Congress alone can legislate and provide for its own rights as well as the rights and duties of others within that jurisdiction in territories or forts or public vessels, or any other public establishment, and through

the Courts of the United States enforce all rights required for those objects and redress wrongs inflicted within its exclusive jurisdiction,

(Chief Justice Marshall in Cohen *vs.* Virginia, 6 Wheat., 428; also Woodbury, *J.*, in U. S. *vs.* Ames, 9 Law R., 302; U. S. *vs.* Cornell, 2 Mason, 66.)

and the mere circumstance that this power has not been exercised in this instance is inconsequential.

The United States had not abandoned its jurisdiction by ceasing temporarily to use the land for the original purpose. See United States permit to City of Brooklyn within thirty days shall vacate and remove everything from land except the property of the United States, (Record, p. 35, fol. 58.)

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Right to object to jurisdiction was not waived by omission to plead it in writing, but was under the New York law and practice properly raised upon the trial;

(Davidsburgh *vs.* Knickerbocker L. Ins. Co., 90 N. Y., 526;)

and could be raised at any stage of proceeding upon facts appearing.

(Robinson *vs.* Oceanic Steam Navigation Co., 112 N. Y., 315.)

IV.

The Court of Appeals of the State of New York defeated the plaintiffs in error in their contention that this cause should have been brought in the United States Court and not in the State Courts, and that the State Courts had no jurisdiction, upon the sole ground that until Congress had legislated to displace the local State Courts they retained jurisdiction over these lands. We think this was error.

Congress had the sole right to legislate for this territory. The sole right to legislate excludes all power of the State to legislate, which exclusive power to legislate is uniformly attended by exclusive jurisdiction.

See Hawes Jurisdiction of Courts, Section 112, b.

If the Constitution of the United States have exclusive jurisdiction to the Federal Government of this territory, the State could not legislate in violation of such exclusive right, nor could the State Courts exercise any jurisdiction over such territory.

Works Courts and their jurisdiction, Sec. 17, page 68.

In this case the Constitut on gave the power to Congress in such a way that it should be exercised exclusively by Congress, and this being the case, the subject was taken as completely from the State Legislature as if they had been forbidden to act.

Idem., Sec. 112, c.

V.

All of which is respectfully submitted,

H. E. TREMAIN,
M. L. TOWNS,
Attorneys for Plaintiffs in Error.

248

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FILED.
DEC 31 1892
JAMES H. McKENNEY,
CLERK.

U. S. SUPREME COURT.

WILLIAM H. PALMER AND ADOLPH M. DROSTE,
Plaintiffs in Error,

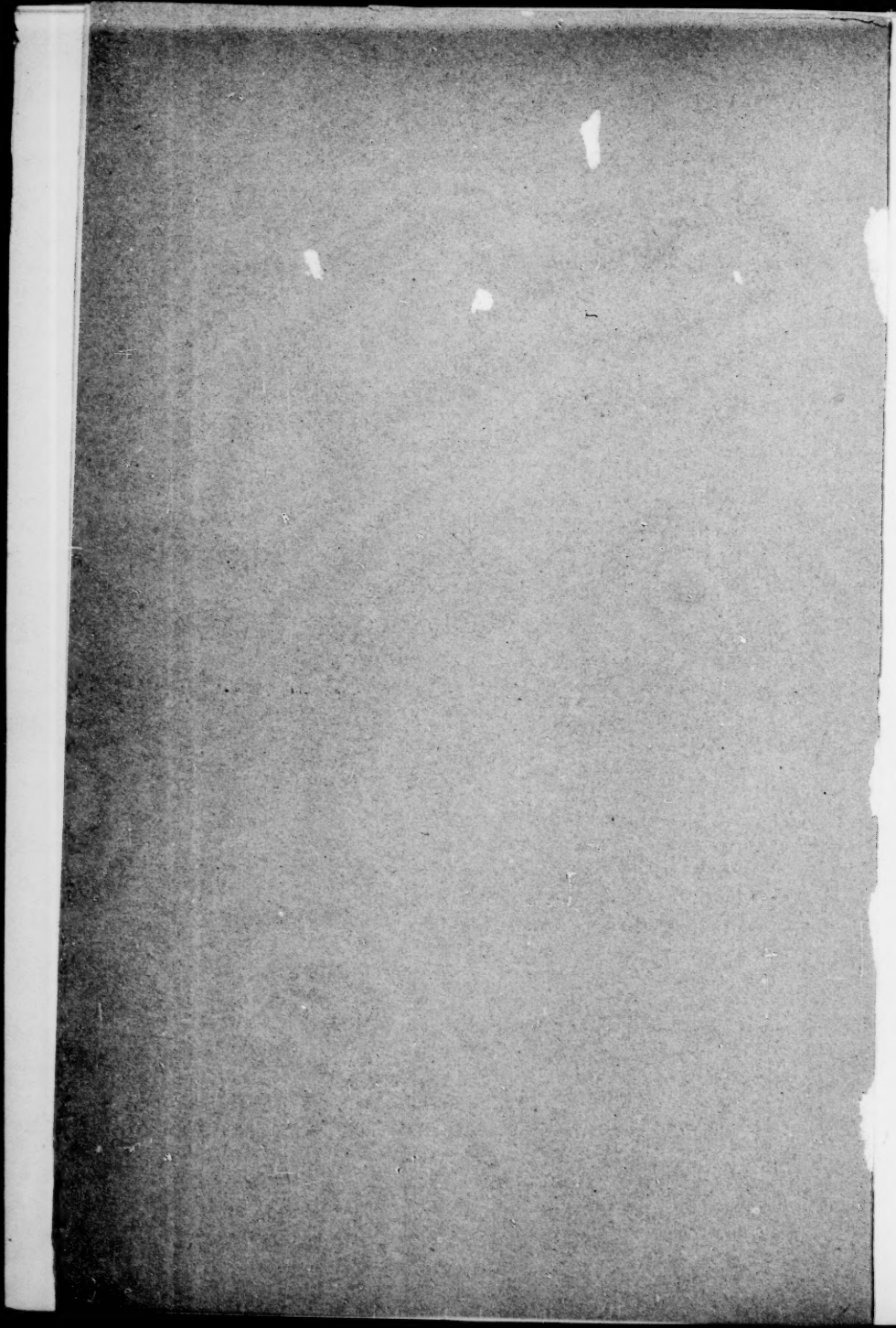
against

MARY H. BARRETT,
Defendant in Error.

Brief on behalf of Defendant in Error.

HUGO HIRSH,
HENRY S. RASQUIN,
Attorneys for Defendant in Error.

HENRY C. DEWITT,
M. L. TOWNS,
Attorneys for Plaintiffs in Error.



UNITED STATES SUPREME COURT.

WILLIAM H. PALMER and ADOLPH M. DROSTE,
Plaintiffs in Error,

against

MARY H. BARRETT,
Defendant in Error.

Brief on behalf of Defendant in Error.

STATEMENT.

This action was begun in the City Court of Brooklyn (one of ~~the~~ Superior City Courts of the State of New York, § 3343 N. Y. Code of Civil Procedure), by the above named defendant in error against the above named plaintiffs in error for damages resulting from a trespass *guare clausum fregit*, as stated in the complaint (Record page 2). The defendant in said action (the plaintiffs in error here) answer separately. The answer of Palmer consists simply of a general denial of all the allegations of the complaint (Ib. page 2), and the answer of Droste, besides such general denial, contains the further allegations that he, Droste, purchased the premises described in the complaint from his co-defendant Palmer, who was in possession thereof by virtue of a lease from the city of Brooklyn; that at the time of said purchase the plaintiff (the defendant in error), was not in possession of said premises, that the same were then untenanted and deserted, and that he, Droste, entered into possession thereof peaceably and without force. (Ib. page 3.)

The issues thus presented by these pleadings were the only issues to be tried between the parties, and they were properly tried before the court and jury. (§§ 963 to 968 Code of Civil Procedure.)

Thus it is evident that the *pleadings* presented no Federal question in the court below.

The facts as presented by the evidence adduced on behalf of the defendant in error—and practically undisputed—were that in February, 1889, Palmer, one of the plaintiffs in error, leased to the defendant in error certain booths or market stands in the Wallabout market, Brooklyn, for two years, and that defendant in error had paid to said Palmer the rents reserved by said lease, five months in advance and up to July, 1889; that in April, 1889, the plaintiffs in error, acting together, without right, took possession of the stands, ejected the defendant in error therefrom, and destroyed or converted to their own use certain fixtures and other property, and have ever since excluded the defendant in error from possession of said premises.

At the conclusion of the testimony on behalf of the defendant in error, the plaintiffs in error moved the trial court to dismiss the complaint on the grounds: that no demand was made for the possession of the property; that there was no evidence connecting Droste with the trespass, and no proof of the conversion of the goods by either Palmer or Droste. (Ib. page 12.)

Thus it will become evident to this Honorable Court that although from the evidence of defendant in error (Ib. pages 6 to 8), and the written lease (Ib. page 27), it appeared that the trespass complained of was committed on Wallabout market—a place known to be a portion of the land used by the Federal Government for Navy Yard and Hospital purposes—yet the motion to dismiss was not based upon any such ground, and hence no Federal question was thus far presented.

The evidence adduced on behalf of the plaintiffs in error consisted first of chapter 355 of the laws of the State of New York, passed 1853, entitled, "An act to vest in the United States of America jurisdiction over certain lands in the city of Brooklyn, and adjacent thereto" (Ib. page 12), then of testimony going to the measure of damages suffered by the defendant in error, and then of certain documentary evidence, none of which is material except the lease of the United States to the city of Brooklyn of a portion of the lands described in the act of 1853. (Ib. page 35.)

We desire to call the attention of this Honorable Court to the two material sections of chapter 355, Laws of 1853, which are as follows:

§ 1. The jurisdiction of this State over all the lands in and adjacent to the city of Brooklyn, belonging to the United States, and used and occupied as a navy yard and naval hospital, and which has not heretofore been ceded to the United States is hereby ceded to the United States for the uses and purposes of a navy yard and naval hospital, on the condition, &c.

§ 4. The United States may retain such use and jurisdiction as long as the premises described shall be used for the purposes for which jurisdiction is ceded, and no longer. * * *

There is no other evidence in this case to show how the United States Government acquired the property in question, and, as shown above, the act of 1853 simply cedes the jurisdiction of the State of New York over those lands to the United States so long as the premises are used for the purposes for which jurisdiction is ceded, *i. e.*, for navy yard and naval hospital purposes, *and no longer;* but the act does not cede the lands or the title thereto.

At the close of all the evidence the counsel for the plaintiffs in error moved to dismiss the complaint upon the following ground: "Because it appears that the acts of trespass complained of * * * were committed upon territory outside of the State of New York, and consequently outside of the city of Brooklyn, viz., upon United States territory and reservation belonging to the United States, used for the purpose of navy yards, docks, marine hospitals, &c., and upon the ground that it appears upon all the evidence now that this court has not jurisdiction of the subject matter of this action." (Ib. page 23.)

This motion was denied; the case went to the jury, who rendered a verdict in favor of the defendant in error (Ib. page 26), and judgment was entered on such verdict (Ib. page 26). An appeal was taken to the General Term of the City Court of Brooklyn (Ib. pages 26 and 27), where the judgment was affirmed (Ib. page 36). An appeal was then taken to the Court of Appeals (Ib. page 37), where the judgment was again

affirmed (Ib. page 40). And thereupon and after the judgment of the Court of Appeals had been made the judgment of the court below (Ib. page 41), the writ of error to this court was obtained. The grounds of error as stated in said writ are: "Wherein was drawn in question the validity of a statute of or an authority exercised under said State on the ground of their being repugnant to the Constitution or laws of the United States, and the decision was in favor of such their validity; and wherein was drawn in question the construction of a clause of the Constitution and statutes of the United States, and the decision was against the title, right privilege and exemption, specially set up or claimed under such clause of the said Constitution and statutes." (Ib. page 46.)

Nowhere in the entire record does it appear what statute or authority of the State was drawn in question, or what clause of the Constitution and statutes of the United States was drawn into question or construed.

POINTS.

I.

In order to confer jurisdiction upon this court to review on a writ of error the final decision of the highest State court, it must apear in the record certified to this court that a federal question was presented to the court below; that is, it should clearly appear, either that there was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and that the decision was against its validity, or the validity of a statute of, or an authority exercised under, any State, on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity; or that some title, right, privilege or immunity was claimed under the Constitution, or some treaty, statute of or commission held or authority exercised under the United States, and the decision was against the title, right or privilege or immunity specially set up or claimed by the plaintiff in error.

If the record fails to show this, the writ will be dismissed for want of jurisdiction.

Caperton vs. Bowyer, 14 Wall. 216.
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The record must present a specific question for review; and it is not sufficient that it state in a general way that "the charge of the court, the verdict of the jury and the judgment below, are each against and in conflict with the Constitution of the United States," but the specific clause of the Constitution, or the particular statutes or act of Congress, should be indicated that the Court may determine not only what the claim is, but whether it was denied.

Maxwell vs. Newbold, 18 How. 511.
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Edwards vs. Elliott, 21 Wall. 532.
Scott vs. Jones, 5 How. 343.
Lawlor vs. Walker, 14 How. 149.

Now let us see what the Court of Appeals decided in this case.

The only point presented in the court below by the plaintiffs in error, which could be in any wise construed to raise a Federal question was that on the motion to dismiss the complaint on the ground that the trespass complained of was committed on property of the United States used for navy yard, &c., and that (*therefore*) the City Court of Brooklyn had no jurisdiction. (Ib. page 23.) We insert the word *therefore* in the language of the motion, for no other reason is given for the want of jurisdiction of that court.

The City Court of Brooklyn was established, as were some of the other courts referred to, as "an inferior local court of civil and criminal jurisdiction," under the authority of the Constitution of the State of New York of 1846. (Const. Art. 6, § 14.) The court was established in 1849, and its jurisdiction, as conferred by the judiciary article of the Constitution of 1869, was declared by the act creating it. (Laws of New York State, 1849, chap. 125.) And the Constitution of that

State as now in force declares that the City Court of Brooklyn and the other courts named, "are continued with the powers and jurisdiction they now severally have, and such further civil and criminal jurisdiction as may be conferred by law." (Art. 6, § 12.) Under the present Code of Civil Procedure of the State of New York, jurisdiction of the City Court of Brooklyn is extended to actions enumerated in section 263, as follows:

1. "To actions of ejectment; partition; foreclosure of real property or on chattels; to compel determination of claim to real property; waste; for a nuisance; to procure a judgment directing a conveyance of real property; and to every other action to recover or to procure a judgment establishing, determining, defining, forfeiting, annulling or otherwise affecting an estate, right, title, lien or other interest in real property or a chattel real. *But jurisdiction attaches under this subdivision only where the real property, to which the action relates, is situated within the city where the Court is located.*"

Thus we find the jurisdiction limited to the *subject of the action.*

Subdivision 2 applies "To an action for *any other cause* where the cause of action arose within the city; *or* where the defendant is a resident of that city; *or* where the summons is personally served upon the defendant therein; *or* where the action is brought to recover a penalty or for any other cause of action given by the charter, a by-law or an ordinance of that city."

By this subdivision, jurisdiction is limited to the *locus in quo,* residence of the defendant or place of service.

Suppose we admit, for the purpose of this point, that the *locus in quo was* in the territory of the United States, yet what reason can be given for refusing jurisdiction when the *defendants are not only residents of the city of Brooklyn, but were both served with process therein?* If it had been the intent of the Legislature of this State to limit the jurisdiction of Superior City Courts in actions of trespass *quære clausum fregit* to the locality where the land was situated, would it not have expressed it in so many words? Would it not have been "so nominated in the bond?"

But on the contrary, the Legislature went further still and enacted as follows:

"SUBDIVISION 3. *To an action to recover damages for an injury to real property* or a chattel real; or for the breach of a contract, express or implied, relating to real property or a chattel real; where the real property is situated within that city, *or* where the defendant is a resident of that city, *or* where the summons is personally served upon the defendant therein."

Now, what is "Trespass *quære clausum fregit?*"

Bouvier defines it as follows: "The form of action which lies *to recover damages for injuries to the realty* consequent upon entry without right upon the plaintiff's land."

Does this cause of action not come properly under subdivision 3 of § 263, above quoted? If it does, then why did the City Court of Brooklyn not acquire jurisdiction by the service of the summons personally upon the defendants, considering also the undisputed fact that both defendants reside in the city?

But there is still another section of the Code to which we would most respectfully call the attention of this Honorable Court, and that is section 266, which says that "The jurisdiction of a Superior City Court in an action or special proceeding brought therein *must always be presumed.* It is not necessary to set forth in a complaint in such an action, or in the petition or other statement of the case in such a special proceeding, any of the jurisdictional facts specified in section 263 of this act; and where the defendant in the action, or the person against whom the special proceeding is instituted appears, the want of jurisdiction by reason of the non-existence of any of those facts is matter of defence, *and is waived by the appearance, unless it is pleaded in defence.*"

We desire to emphasize two points in this section:

First.—That it directs attention to the fact that section 263 is the *only* section which gives, limits, qualifies and circumscribes the jurisdiction of Superior City Courts; and

Second—That the plaintiff need not plead jurisdiction, but the defendant *must* do so or waive it.

THUS IT IS APPARENT THAT WHILE PLAINTIFFS IN ERROR HAD THE OPPORTUNITY OF RAISING THE JURISDICTIONAL QUESTION

SQUARELY ON THE PLEADINGS, THEY CHOSE NOT TO DO SO AND THEREBY WAIVED IT. And the Court of Appeals simply confirmed the jurisdiction of the City Court of Brooklyn as regulated by statute.

The record does not show under what clause of the Constitution the decision of the court was in conflict with. (Maxwell vs. Newbold, 18 How. 317.)

The record does not state the validity of what statute was drawn in question. (Lawler vs. Walker, 14 How. 149.)

Nowhere does it appear by the record that any section of the Constitution of the United States, or any provision thereof, was cited by the plaintiffs in error upon the trial of this action in behalf of their contention that the City Court of Brooklyn had no jurisdiction. But on appeal to the General Term of that Court, Article 1, section 8, of the United States Constitution, was cited to sustain that contention. That section provides that "Congress shall have power to exercise exclusive legislation in all cases * * over all places purchased by consent of the Legislature of the States in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards and other needful buildings." But there is nothing to show—there is no evidence whatever in this case to prove—that these lands were purchased by the United States, and it has been expressly and repeatedly held by this court that if they were not so purchased, however else they were acquired, this Constitutional provision does not apply.

Chicago & P. R. Co. vs. McGlinn, 114 U. S. 542.
Fort Leavenworth R. R. Co. vs. Lowe, Ib. 525.

The only evidence in this case showing how the lands in question were acquired by the United States is chap. 355, Laws of 1853. (Ib. pp. 12 and 13.) Section 1 of that act recites the cession to be for the uses of a navy yard and naval hospital upon the condition mentioned in the following section, which is the payment by the United States, of the sum of $11,383.73; but there is no evidence in this case that that condition was ever complied with. And section 4 of that act reserves to the State jurisdiction if the premises are not used for the purposes for which jurisdiction is ceded.

At the time this cause of action arose, the lands in question were not so used, but had been expressly leased to the

City of Brooklyn for market purposes (page 35); the City of Brooklyn had sublet a portion of them to Palmer—one of the plaintiffs in error—and he in turn sublet to the defendant in error.

The case of the Chicago & P. R. Co. vs. McGlinn, *ante*, is almost identical with the case at bar, and in that case, Justice Field, delivering the opinion of this court, said:

"It is a general rule of public law, recognized and acted upon by the United States, that whenever political jurisdiction and legislative power over any territory are transferred from one nation or soverign to another, *the municipal laws of the country*, that is, *laws which are intended for the protection of private rights*, continue in force until abrogated or changed by the new government or soverign. (114 U. S. p. 546.) * *

* *The government of the State of Kansas extended over the Reservation, and its legislation was operative therein*, except so far as the use of the land as an instrumentality of the general government may have excepted it from such legislation. IN OTHER RESPECTS THE LAW OF THE STATE PREVAILED." (Ib. p. 547.)

The case at bar is still stronger than the case above cited, for here the United States no longer used the lands for the purposes for which they had been ceded, but had leased them back to the city of Brooklyn for market purposes.

But in addition to all that we have said upon this point, we desire to call the attention of this Honorable Court to the fact that although plaintiffs in error were strenuous in their contention that the City Court of Brooklyn had no jurisdiction, yet they failed to even intimate what court would have jurisdiction if their contention was upheld. Neither the United States District or Circuit Courts have such jurisdiction, and Congress has not made any regulations touching the administration of justice in civil cases with respect to actions arising in lands situated as the premises in question were situated. Hence, if the position taken by the plaintiffs in error had been upheld, the defendant in error would have been in the extraordinary situation of having admittedly suffered great damage without fault on her part, and yet be without a remedy.

II.

The decision and judgment of the Court of Appeals did not affirm the validity of any statute of the State of New York claimed by the plaintiffs in error to be in contravention of any law of Congress, nor was the validity of any such statute "drawn in question" in the court below.

There was not even a pretense of any such claim made by the plaintiffs in error. They simply claimed that because jurisdiction over a plot of land situated within the limits of the City of Brooklyn had been ceded to the United States for navy yard purposes that thereby the State of New York, the County of Kings and City of Brooklyn had been dismembered, and the laws, which are intended for the protection of the rights of private individuals, residing in said city and served with process therein, were abrogated. The plaintiffs in error cited no law of Congress, nor did they pretend that the statutes conferring jurisdiction on the City Court of Brooklyn were repugnant to any such law.

III.

The plaintiffs in error did not "draw in question" in the state courts, the validity of any *authority* exercised by or under the State of New York, nor was there any decision in the State court in favor of an authority so exercised and questioned by them.

"The 'authority exercised under any State' is not to be so construed as to apply to decisions made by the State court. The authority conferred by a State on its courts to hear and determine cases is not the kind of authority referred to in the section (§ 709 U. S. R. S.), otherwise every judgment of the Supreme Court of a State would be examinable under this section."

Bethel vs. Demaret, 10 Wall. 537.

In the case at bar the only "authority" exercised was that given by the Constitution of the State and the statutory enactments passed in accordance therewith.

IV.

To give this court jurisdiction of a writ of error to a State court it must appear affirmatively not only that a Federal question was presented for decision to the highest court of the State having jurisdiction, *but that its decision was necessary to the determination of the cause, and that it was actually decided, or that the judgment as rendered could not have been given without deciding it.*

Blount vs. Walker, 134 U. S. 607, and cases there cited.

Cook County vs. Calumet & Chicago Canal Co., 138 U. S. 635.

If the case at bar might have been determined upon a ground broad enough to support the judgment without resort to a Federal question, this court has no jurisdiction.

Wood Mowing Co. vs. Skinner, 139 U. S. 293.

Beauprè vs. Noyes, 138 Ib. 397.

Hammond vs. Johnston, 142 Ib. 73.

Haley vs. Breeze, 144 Ib. 130.

Nor will this court entertain jurisdiction where it appears from the record that the judgment or decree of the court below may be well sustained upon other grounds than the one involved in the federal question presented, although there was error in the decision as to the latter.

Kennebec R. R. vs. Portland R. R., 14 Wall. 23.

Rector vs. Ashley, 6 Wall. 142.

And so this court will not acquire jurisdiction where, though the record presents a Federal question, such question was not in fact passed on, and its decision was not necessary in determining the rights of the parties.

Manus vs. O'Sullivan, 91 U. S. 578.

Brown vs. Atwell, 92 Ib. 329.

It is apparent from these decisions that on a writ of error to a State court, this Court will exercise jurisdiction only where the record shows the following:

1. That a Federal question was presented.

2. That that question was in fact passed upon by the court below.

3. That the decision upon that question was necessary in determining the rights of the parties.

4. That the judgment could not have been rendered without such decision.

5. That the judgment of the court below cannot be sustained upon other grounds than the one involved in the Federal question.

We most respectfully submit to this Honorable Court that not one of the five grounds above mentioned apply to the case at bar. The only question raised, and the only question decided, was the question of the jurisdiction of the City Court of Brooklyn. And there was no question presented or decided concerning the Constitutional existence of that court, nor the right and power of the legislature of the State of New York to confer the jurisdiction upon that court which it possesses.

V.

From the lawless act which caused this litigation to the present, the conduct of the plaintiffs in error has been to harass, humiliate, annoy and delay the defendant in error. From the time they interposed their weak defence to the obtaining of this writ of error, they have shown their intention of wearing out and tiring out this defendant in error. On the trial of this cause the trial judge charged the jury that there was nothing for them to consider but the question of damages (Record, middle of page 24); and now there is nothing for the plaintffs in error to look forward to but delay.

VI.

The writ of error should be dismissed and the judgment of the State court affirmed with costs and damages for the delay.

VII.

All which is respectfully submitted.

HUGO HIRSH,
HENRY S. RASQUIN,
Attorneys for defendant in error.

Office Supreme Court U. S.
FILED
MAR 30 1896
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CLERK

194

U. S. SUPREME COURT.

WILLIAM H. PALMER AND ADOLPH M. DROSTE,
Plaintiffs in Error,

against

MARY H. BARRETT,
Defendant in Error.

Brief on behalf of Defendant in Error.

HUGO HIRSH,
HENRY S. RASQUIN,
Attorneys for Defendant in Error.

HENRY C. DEWITT,
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4. That the judgment could not have been rendered without such decision.

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UNITED STATES SUPREME COURT.

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Brief on behalf of Defendant in Error.

STATEMENT.

This action was begun in the City Court of Brooklyn (one of the Superior City Courts of the State of New York, § 3343 N. Y. Code of Civil Procedure), by the above named defendant in error against the above named plaintiffs in error for damages resulting from a trespass *quare clausum fregit*, as stated in the complaint (Record page 2). The defendant in said action (the plaintiffs in error here) answer separately. The answer of Palmer consists simply of a general denial of all the allegations of the complaint (Ib. page 2), and the answer of Droste, besides such general denial, contains the further allegations that he, Droste, purchased the premises described in the complaint from his co-defendant Palmer, who was in possession thereof by virtue of a lease from the city of Brooklyn; that at the time of said purchase the plaintiff (the defendant in error), was not in possession of said premises, that the same were then untenanted and deserted, and that he, Droste, entered into possession thereof peaceably and without force. (Ib. page 3.)

The issues thus presented by these pleadings were the only issues to be tried between the parties, and they were properly tried before the court and jury. (§§ 963 to 968 Code of Civil Procedure.)

Thus it is evident that the *pleadings* presented no Federal question in the court below.

The facts as presented by the evidence adduced on behalf of the defendant in error – and practically undisputed – were that in February, 1889, Palmer, one of the plaintiffs in error, leased to the defendant in error certain booths or market stands in the Wallabout market, Brooklyn, for two years, and that defendant in error had paid to said Palmer the rents reserved by said lease, *five months in advance* and up to July, 1889; that in April, 1889, the plaintiffs in error, acting together, without right, took possession of the stands, ejected the defendant in error therefrom, and destroyed or converted to their own use certain fixtures and other property, and have ever since excluded the defendant in error from possession of said premises.

At the conclusion of the testimony on behalf of the defendant in error, the plaintiffs in error moved the trial court to dismiss the complaint on the grounds: that no demand was made for the possession of the property; that there was no evidence connecting Droste with the trespass, and no proof of the conversion of the goods by either Palmer or Droste. (Ib. page 12.)

Thus it will become evident to this Honorable Court that although from the evidence of defendant in error (Ib. pages 6 to 8), and the written lease (Ib. page 27), it appeared that the trespass complained of was committed on Wallabout market—a place known to be a portion of the land used by the Federal Government for Navy Yard and Hospital purposes – yet the motion to dismiss was not based upon any such ground, and hence no Federal question was thus far presented.

The evidence adduced on behalf of the plaintiffs in error consisted first of chapter 355 of the laws of the State of New York, passed 1853, entitled, "An act to vest in the United States of America jurisdiction over certain lands in the city of Brooklyn, and adjacent thereto" (Ib. page 12), then of tes-

timony going to the measure of damages suffered by the defendant in error, and then of certain documentary evidence, none of which is material except the lease of the United States to the city of Brooklyn of a portion of the lands described in the act of 1853. (Ib. p. 35.)

We desire to call the attention of this Honorable Court to the two material sections of chapter 355, Laws of 1853, which are as follows:

§ 1. The jurisdiction of this State over all the lands in and adjacent to the city of Brooklyn, belonging to the United States, and used and occupied as a navy yard and naval hospital, and which has not heretofore been ceded to the United States is hereby ceded to the United States for the uses and purposes of a navy yard and naval hospital, on the condition, &c.

§ 4. The United States may retain such use and jurisdiction as long as the premises described shall be used for the purposes for which jurisdiction is ceded, and no longer. * * *

There is no other evidence in this case to show how the United States Government acquired the property in question, and, as shown above, the act of 1853 simply cedes the jurisdiction of the State of New York over those lands to the United States so long as the premises are used for the purposes for which jurisdiction is ceded, *i. e.*, for navy yard and naval hospital purposes, *and no longer;* but the act does not cede the lands or the title thereto.

At the close of all the evidence the counsel for the plaintiffs in error moved to dismiss the complaint upon the following ground: "Because it appears that the acts of trespass complained of * * * were committed upon territory outside of the State of New York, and consequently outside of the city of Brooklyn, viz., upon United States territory and reservation belonging to the United States, used for the purpose of navy yards, docks, marine hospitals, &c., and upon the ground that it appears upon all the evidence now that this court has not jurisdiction of the subject matter of this action." (Ib. page 23.)

This motion was denied: the case went to the jury, who rendered a verdict in favor of the defendant in error (Ib. page 26), and judgment was entered on such verdict (Ib. page 26). An appeal was taken to the General Term of the City Court of Brooklyn (Ib. pages 26 and 27), where the judgment was affirmed (Ib. page 36). An appeal was then taken to the Court of Appeals (Ib. page 37), where the judgment was again affirmed (Ib. page 40). And thereupon and after the judgment of the Court of Appeals had been made the judgment of the court below (Ib. page 41), the writ of error to this court was obtained. The grounds of error as stated in said writ are: "Wherein was drawn in question the validity of a statute of or an authority exercised under said State on the ground of their being repugnant to the Constitution or laws of the United States, and the decision was in favor of such their validity; and wherein was drawn in question the construction of a clause of the Constitution and statutes of the United States, and the decision was against the title, right, privilege and exemption, specially set up or claimed under such clause of the said Constitution and statutes." (Ib. page 46.)

Nowhere in the entire record does it appear what statute or authority of the State was drawn in question, or what clause of the Constitution and statutes of the United States was drawn into question or construed.

POINTS.

I.

In order to confer jurisdiction upon this court to review on a writ of error the final decision of the highest State court, it must appear in the record certified to this court that a federal question was presented to the court below; that is, it should clearly appear, either that there was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and that the decision was against its validity, or the validity of a statute of, or an au-

thority exercised under, any State, on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity; or that some title, right, privilege or immunity was claimed under the Constitution, or some treaty, statute of or commission held or authority exercised under the United States, and the decision was against the title, right or privilege or immunity specially set up or claimed by the plaintiff in error.

If the record fails to show this, the writ will be dismissed for want of jurisdiction.

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Now let us see what the Court of Appeals decided in this case.

The only point presented in the court below by the plaintiffs in error, which could be in any wise construed to raise a Federal question was that on the motion to dismiss the complaint on the ground that the trespass complained of was committed on property of the United States used for navy yard,

&c., and that (*therefore*) the City Court of Brooklyn had no jurisdiction. (Ib. page 23.) We insert the word *therefore* in the language of the motion, for no other reason is given for the want of jurisdiction of that court.

The City Court of Brooklyn was established, as were some of the other courts referred to, as "an inferior local court of civil and criminal jurisdiction," under the authority of the Constitution of the State of New York of 1846. (Const. Art. 6, § 14.) The court was established in 1849, and its jurisdiction, as conferred by the judiciary article of the Constitution of 1869, was declared by the act creating it. (Laws of New York State, 1849, chap. 125.) And the Constitution of that State as now in force (Constitution of 1875) declares that the City Court of Brooklyn and the other courts named, "are continued with the powers and jurisdiction they now severally have, and such further civil and criminal jurisdiction as may be conferred by law." (Art. 6, § 12.) Under the present Code of Civil Procedure of the State of New York, jurisdiction of the City Court of Brooklyn is extended to actions enumerated in section 263, as follows:

1. "To actions of ejectment; partition; foreclosure of real property or on chattels; to compel determination of claim to real property; waste; for a nuisance; to procure a judgment directing a conveyance of real property; and to every other action to recover or to procure a judgment establishing, determining, defining, forfeiting, annulling or otherwise affecting an estate, right, title, lien or other interest in real property or a chattel real. *But jurisdiction attaches under this subdivision only where the real property, to which the action relates, is situated within the city where the Court is located.*

Thus we find the jurisdiction limited to the *subject of the action.*

Subdivision 2 applies "To an action for *any other cause* where the cause of action arose within the city; *or* where the defendant is a resident of that city; *or* where the summons is personally served upon the defendant therein; *or* where the action is brought to recover a penalty or for any other cause of action given by the charter, a by-law or an ordinance of that city."

By this subdivision, jurisdiction is limited to the *locus in quo*, residence of the defendant or place of service.

Suppose we admit, for the purpose of this point, that the *locus in quo was* in the territory of the United States, yet what reason can be given for refusing jurisdiction when the *defendants are not only residents of the city of Brooklyn, but were both served with process therein?* If it had been the intent of the Legislature of this State to limit the jurisdiction of Superior City Courts in actions of trespass *quare clausum fregit* to the locality where the land was situated, would it not have expressed it in so many words? Would it not have been "so nominated in the bond?"

But on the contrary, the Legislature went further still and enacted as follows:

"SUBDIVISION 3. *To an action to recover damages for an injury to real property* or a chattel real; or for the breach of a contract, express or implied, relating to real property or a chattel real; where the real property is situated within that city, *or* where the defendant is a resident of that city, *or* where the summons is personally served upon the defendant therein."

Now, what is "Trespass *quare clausum fregit?*"

Bouvier defines it at follows: "The form of action which lies *to recover damages for injuries to the realty* consequent upon entry without right upon the plaintiff's land."

Does this cause of action not come properly under subdivision 3 of § 263, above quoted? If it does, then why did the City Court of Brooklyn not acquire jurisdiction by the service of the summons personally upon the defendants, considering also the undisputed fact that both defendants reside in the city?

But there is still another section of the Code to which we would most respectfully call the attention of this Honorable Court, and that is section 266, which says that "The jurisdiction of a Superior City Court in an action or special proceeding brought therein *must always be presumed.* It is not necessary to set forth in a complaint in such an action, or in

the petition or other statement of the case in such a special proceeding, any of the jurisdictional facts specified in section 263 of this act; and where the defendant in the action, or the person against whom the special proceeding is instituted appears, the want of jurisdiction by reason of the non-existence of any of those facts is matter of defence, *and is waived by the appearance, unless it is pleaded in defence.*"

The case of Davidsburger vs. Knickerbocker Life Ins. Co., 90 N. Y. 526, cited by plaintiff in error to sustain his right to raise the question of the jurisdiction of the City Court of Brooklyn at the trial of the case and without pleading it, is not in point, as in that case the defendant was a corporation and had its principal office in the city of New York, and the Court of Appeals in case above cited held that such being the case the service of process upon the secretary of such corporation within the city of Brooklyn did not confer jurisdiction; that such service was good only in the case of a natural person, not the case of a corporation.

But in a much later case (Poffinger vs. Yutte, 102 N. Y. 42) the Court of Appeals held squarely that unless want of jurisdiction is pleaded as matter of defense under Section 266 of the Code of Civil Procedure it is waived by appearance.

Neither is the case of Robinson vs. Oceanic Steam Navigation Co., 112 N. Y. 315 (cited by plaintiff in error) in point. In that case both plaintiff and defendants were non-residents of the State, and the cause of action had arisen "within the territorial limits of the United Kingdom of Great Britain and Ireland."

We desire to emphasize two points in section 266.

First.—That it directs attention to the fact that section 263 is the *only* section which gives, limits, qualifies and circumscribes the jurisdiction of Superior City Courts; and

Second.—That the plaintiff need not plead jurisdiction, but the defendant *must* do so or waive it.

THUS IT IS APPARENT THAT WHILE PLAINTIFFS IN ERROR HAD THE OPPORTUNITY OF RAISING THE JURISDICTIONAL QUESTION SQUARELY ON THE PLEADINGS, THEY CHOSE NOT TO DO SO AND

THEREBY WAIVED IT. And the Court of Appeals simply confirmed the jurisdiction of the City Court of Brooklyn as regulated by statute.

The record does not show what clause of the Constitution the decision of the court was in conflict with. (Maxwell vs. Newbold, 18 How. 317.)

The record does not state the validity of what statute was drawn in question. (Lawler vs. Walker, 14 How. 149.)

Nowhere does it appear by the record that any section of the Constitution of the United States, or any provision thereof, was cited by the plaintiffs in error upon the trial of this action in behalf of their contention that the City Court of Brooklyn had no jurisdiction. But on appeal to the General Term of that Court, Article 1, section 8, of the United States Constitution, was cited to sustain that contention. That section provides that "Congress shall have power to exercise exclusive legislation in all cases * * over all places purchased by consent of the Legislature of the States in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards and other needful buildings." But there is nothing to show—there is no evidence whatever in this case to prove—that these lands were purchased by the United States, and it has been expressly and repeatedly held by this court that if they were not so purchased, however else they were acquired, this Constitutional provision does not apply.

Chicago & P. R. Co. vs. McGlinn, 114 U. S. 542.
Fort Leavenworth R. R. Co. vs. Lowe, Ib. 525.

The only evidence in this case showing how the lands in question were acquired by the United States is chap. 355, Laws of 1853. (Ib. pp. 12 and 13.) Section 1 of that act recites the cession to be for the uses of a navy yard and naval hospital upon the condition mentioned in the following section, which is the payment by the United States, of the sum of $11,383.73; but there is no evidence in this case that that condition was ever complied with. And section 4 of that act reserves to the State jurisdiction if the premises are not used for the purposes for which jurisdiction is ceded.

At the time this cause of action arose, the lands in question were not so used, but had been expressly leased to the City of Brooklyn for market purposes (page 35); the City of Brooklyn had sublet a portion of them to Palmer—one of the plaintiffs in error - and he in turn sublet to the defendant in error.

The case of the Chicago & P. R. Co. vs. McGlinn, *ante*, is almost identical with the case at the bar, and in that case, Justice Field, delivering the opinion of this court, said:

"It is a general rule of public law, recognized and acted upon by the United States, that whenever political jurisdiction and legislative power over any territory are transferred from one nation or sovereign to another, *the muncipal laws of the country*, that is, *laws which are intended for the protection of private rights*, continue in force until abrogated or changed by the new government or soverign. (114 U. S. p. 546.) * * * *The government of the State of Kansas extended over the Reservation, and its legislation was operative therein*, except so far as the use of the land as an instrumentality of the general government may have excepted it from such legislation. IN OTHER RESPECTS THE LAW OF THE STATE PREVAILED." (Ib. p. 547.)

The case at bar is still stronger than the case above cited, for here the United States no longer used the lands for the purposes for which they had been ceded, but had leased them back to the city of Brooklyn for market purposes.

But in addition to all that we have said upon this point, we desire to call the attention of this Honorable Court to the fact that although plaintiffs in error were strenuous in their contention that the City Court of Brooklyn had no jurisdiction, yet they failed to even intimate what court would have jurisdiction if their contention was upheld. Neither the United States District or Circuit Courts have such jurisdiction, and Congress has not made any regulations touching the administration of justice in civil cases with respect to actions arising in lands situated as the premises in question were situated. Hence, if the position taken by the plaintiffs

in error had been upheld, the defendant in error would have been in the extraordinary situation of having admittedly suffered great damage without fault on her part, and yet be without a remedy.

II.

The decision and judgment of the Court of Appeals did not affirm the validity of any statute of the State of New York claimed by the plaintiffs in error to be in contravention of any law of Congress, nor was the validity any such statute "drawn in question" in the court below.

There was not even a pretense of any such claim made by the plaintiffs in error. They simply claimed that because jurisdiction over a plot of land situated within the limits of the city of Brooklyn had been ceded to the United States for navy yard purposes that thereby the State of New York, the County of Kings and City of Brooklyn had been dismembered, and the laws, which are intended for the protection of the rights of private individuals, residing in said city and served with process therein, were abrogated. The plaintiffs in error cited no law of Congress, nor did they pretend that the statutes conferring jurisdiction on the City Court of Brooklyn were repugnant to any such law.

III.

The plaintifis in error did not "draw in question" in the state courts, the validity of any *authority* exercised by or under the State of New York, nor was there any decision in the State court in favor of an authority so exercised and questioned by them.

"The 'authority exercised under any State' is not to be so construed as to apply to decisions made by the State court. The authority conferred by a State on its courts to hear and determine cases is not the kind of authority referred to in the section (§ 709 U. S. R. S.), otherwise every judgment of the Supreme Court of a State would be examinable under this section."

Bethel vs. Demaret, 10 Wall. 537.

In the case at bar the only "authority" exercised was that given by the Constitution of the State and the statutory enactments passed in accordance therewith.

IV.

To give this court jurisdiction of a writ of error to a State court it must appear affirmatively not only that a Federal question was presented for decision to the highest court of the State having jurisdiction, *but that its decision was necessary to the determination of the cause, and that it was actually decided, or that the judgment as rendered could not have been given without deciding it.*

Blount vs. Walker, 134 U. S. 607, and cases there cited.

Cook County vs. Calumet & Chicago Canal Co., 138 U. S. 635.

If the case at bar might have been determined upon a ground broad enough to support the judgment without resort to a Federal question, this court has no jurisdiction.

Wood Mowing Co. vs. Skinner, 139 U. S. 293.
Beauprè vs. Noyes, 138 Ib. 397.
Hammond vs. Johnston, 142 Ib. 73.
Haley vs. Breeze, 144 Ib. 130.

Nor will this court entertain jurisdiction where it appears from the record that the judgment or degree of the court below may be well sustained upon other grounds than the one involved in the Federal question presented, although there was error in the decision as to the latter.

Kennebec R. R. vs. Portland R. R., 14 Wall. 23.
Rector vs. Ashley, 6 Wall. 142.

And so this court will not acquire jurisdiction where, though the record presents a Federal question, such question

was not in fact passed on, and its decision was not necessary in determining the rights of the parties.

Manus vs. O'Sullivan, 91 U. S. 578.
Brown vs. Atwell, 92 Ib. 329.

It is apparent from these decisions that on a writ of error to a State court, this Court will exercise jurisdiction only where the record shows the following:

1. That a Federal question was presented.

2. That that question was in fact passed upon by the court below.

3 That the decision upon that question was necessary in determining the rights of the parties.

4. That the judgment could not have been rendered without such decision.

5. That the judgment of the court below cannot be sustained upon other grounds that the one involved in the Federal question.

We most respectfully submit to this Honorable Court that not one of the five grounds above mentioned apply to the case at bar. The only question raised, and the only question decided, was the question of the jurisdiction of the City Court of Brooklyn. And there was no question presented or decided concerning the Constitutional existence of that court, nor the right and power of the legislature of the State of New York to confer the jurisdiction upon that court which it possesses.

V.

The action was a plain, simple, every day action, between citizens of the same city, for a wrong committed within the territorial boundaries of the same city. The plaintiffs in error did not plead or stand upon the question of the want of jurisdiction of the court, but entered into the trial of the merits of the cause and were defeated. The judgment thus rendered was

appealed to the highest court of the State and there affirmed. No injustice has been done them and none of their rights were abused or interfered with. It is therefore very evident that from the lawless act which caused this litigation to the present, the conduct of the plaintiffs in error has been to harrass, humiliate, annoy and delay the defendant in error. From the time they interposed their weak defence to the obtaining of this writ of error, they have shown their intention of wearing out and tiring out this defendant in error. On the trial of this cause the trial judge charged the jury that there was nothing for them to consider but the question of damages (Record, middle of page 24); and hence there was nothing left for the plaintiffs in error to look forward to but delay. This they accomplished by a writ of error to this court.

VI.

The writ of error should be dismissed and the judgment of the State court affirmed with costs and damages for the delay.

VII.

All which is respectfully submitted.

HUGO HIRSH,
HENRY S. RASQUIN,
Attorneys for defendant in error.

403 & 404 S. & C. 3-3-'92. 25m. FORM 1272. CIN.

R. X. RYAN, General Freight Agent, Cincinnati. G. P. BILES, Ass't General Freight Agent, Cincinnati. J. B. CLANCEY, Contracting Agent, Cincinnati.

CINCINNATI, NEW ORLEANS & TEXAS PACIFIC RAILWAY CO.

(CINCINNATI SOUTHERN RAILWAY.)

FREIGHT CONTRACT.

Cincinnati, O., ... 189.....

RECEIVED from .....

At the CINCINNATI SOUTHERN RAILWAY DEPOT,

THE FOLLOWING ARTICLES IN GOOD ORDER AND SUBJECT TO THESE CONDITIONS:

Marked and numbered as per margin, to be transported from CINCINNATI to their place of destination, on the following terms and conditions, to wit:

The Company shall not be held responsible for the wrong delivery of Goods, unless the name of consignee and place of destination is perfectly marked with ink or paint on the boxes.

☞ It is agreed, and is a part of the consideration of this contract, that the Company will not be responsible for the Leakage of Liquids, Breakage of Glass or Queensware, the Injury or Breakage of Liquids in Glass, Drugs and Medicines in Boxes, Looking Glasses, Glass Show Cases, Picture Frames, Stoves, Castings, or Hollow Ware, Marble, Carriages, Furniture and Chairs loose, Oils and Liquids in Casks, or for the injury or decay of Green Fruit or Vegetables, Eggs, Trees and Shubbery; nor for the injury to the hidden contents of packages; nor for the loss in weight or otherwise of Grain or Coffee in Bags; or for Rice in Tierces; nor for the decay of Perishable Articles; nor for damage arising to any article carried from the effects of heat and cold; nor for the loss of Nuts in Bags, or of Lemons or Oranges in Boxes, unless covered by canvas; or loss or damage to Goods occasioned by Providential causes; or by FIRE FROM ANY CAUSE WHATEVER while in transit or at Stations.

The Company is not responsible for accidents or delays from unavoidable causes. The responsibility of this Company as a Common Carrier, under this Bill of Lading, to commence upon the removal of the Goods from the Depot in the Cars of the Company, and to terminate when delivered to the next Carrier, they being liable only for the rate of freight per 100 pounds, when forwarded through by railroad or water to points beyond their own line.

☞ The Owner or Consignee to pay freight or charges as per specified rates, by the weight as ascertained by the Company's Scales, upon the goods as they arrive. Time not guaranteed.

☞ Freight carried by this Company must be removed from the Station *during business hours*, on the day of its arrival, or it will be stored at the Owner's risk and expense, and in the event of its destruction or damage, from any cause, while in the Depot of the Company, it is agreed that the Company shall not be liable to pay any damage thereof.

IN THE EVENT OF THE LOSS OF ANY PROPERTY FOR WHICH THE CARRIERS MAY BE RESPONSIBLE UNDER THIS BILL OF LADING, THE VALUE OR COST OF THE SAME AT THE POINT AND THE TIME OF SHIPMENT IS TO GOVERN THE SETTLEMENT FOR THE SAME. And in case of loss or damage of any of the Goods named in this Bill of Lading for which this Company may be liable, it is agreed and understood that they may have the benefit of any insurance effected by or on account of the owner of said Goods. Flour barrels and all packages subject to necessary cooperage.

NO CARRIER OR COMPANY FORMING A PART OF THE LINE OVER WHICH SAID FREIGHT IS TO BE TRANSPORTED WILL BE RESPONSIBLE FOR DEMURRAGE OR DETENTION AT ITS TERMINUS OR BEYOND, ON ANY PART OF THE LINE, ARISING FROM ANY ACCUMULATION OR OVER-PRESSURE OF BUSINESS.

In accepting this Bill of Lading, the Shipper or the Agent of the Owner of the property carried expressly accepts and agrees to all its stipulations, exceptions and conditions.

IN WITNESS WHEREOF, The Agent hath affirmed to ..... Bills of Lading of this tenor and date, one of which being accomplished, the other to stand void.

MARKS, CONSIGNEE, Etc.	ARTICLES.	WEIGHT. Subject to Correction.

Charges, $ 100

To .....

Via .....

IN CENTS PER HUNDRED POUNDS.

1st Class.	2d Class.	3d Class.	4th Class.	5th Class.	6th Class.	Special.	Per Bbl.

..... *Agent.*

It is further agreed by Consignee that if goods described herein is not removed within ..... hours after its arrival at destination, or if refused by consignee, they may be removed by Company to a public warehouse at the risk and expense of the owner, and there held subject to the order of the consignee, and the Company's responsibility as a carrier shall cease, and it shall have a lien upon the property for all charges, including demurrage and storage, and may sell the same to pay such charges, after ..... days' notice of such sale has been published.

(EXHIBIT No. 1.)

LOCAL FREIGHT TARIFF No. 15, GEORGIA RAILROAD COMPANY.

TAKING EFFECT JANUARY 1, 1891.

FROM AUGUSTA TO—	Distances.	PER ONE HUNDRED POUNDS. First Class.	Second Class.	Third Class.	Fourth Class.	Fifth Class.	Sixth Class.	Bacon, packed, in any quant'y; bk. meats, C. L. Owner's risk of spoiling.	Flour, in sacks.	Grain, in any quantity; hay, C. L.	Ale and beer, in wood, C. L. Owner's risk of leakage & fermentat'n.	Bbl. Flour, grits, and hominy, in bbls.	Per 100 Pounds. Cotton seed, C. L. Cotton-seed hulls, C. L.	Whiskey, in wood; value limited to 75 cts. per gallon.	Corrosives.	Fertilizers, L. C. L.	Per ton per car-load. Fertilizers, C. L.	Coal, coke, ice, etc.	Iron—pig, scrap, railroad, etc.	Per C. L. of 20,000 lbs. Live stock, etc.	Salt, jig ware, etc.	Per C L. 100 lbs. Clay, brick, wood, bran, etc., C. L., 25,000 lbs.; lumber, 24,000 lbs.	Spirits turpentine, etc., in bbls.; rags, pressed in bales, any quantity.
	Miles.	1	2	3	4	5	6	A	B	C	D	E	F	G	H	J	K	K	L	M	N	O	P	R
		Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	$ cts.	$ cts.	$ cts.	$ cts.	$ cts.	$ cts.	$ cts.
†Wheless	5	12	11	10	8	7	6	6	6	4½	4	7	9	2½	8	8	4	55	35	55	5 00	5 50	4 00	4
Belair	10	16	14	13	10	9	8	8	8	5½	5	9	11	3½	10	10	5	80	50	80	6 50	8 00	5 00	5
Grovetown	15	18	16	15	12	11	9	9	9	6	5½	11	12½	3⅝	12	12	5½	85	55	85	7 50	9 00	6 00	5½
†Forest	16	18	16	15	12	11	9	9	9	6	5½	11	12½	3⅝	12	12	5½	85	55	85	7 50	9 00	6 00	5½
Berzelia	21	20	18	16	14	12	10	10	10	7	6	12	14	5	14	13	6	90	60	90	8 00	10 00	7 00	6
Harlem	25	22	20	18	16	13	11	11	11	7½	7	13	15	5½	16	14	6½	95	65	95	9 00	11 00	8 00	6½
Saw Dust	26	22	20	18	16	13	11	11	11	7½	7	13	15	5½	16	14	6½	95	65	95	9 00	11 00	8 00	6½
Dearing	29	24	21	19	17	14	11	11	11	7½	7	14	15	6	17	15	7	1 00	70	1 00	10 00	11 00	8 00	7
Bonesville	33	26	23	21	19	15	12	12	12	8	7½	15	16	6½	19	16	7½	1 05	75	1 05	12 00	12 00	9 00	7½
Thomson	37	26	23	21	19	15	12	12	12	8	7½	15	16	6½	19	16	7½	1 05	75	1 05	12 00	12 00	9 00	7½
Mesena	43	29	26	24	21	17	13	13	13	9	8	17	17½	6⅔	21	18	8	1 15	85	1 15	14 00	13 00	10 00	8½
Camak	47	29	26	24	21	17	13	13	13	9	8	17	17½	6⅔	21	18	8	1 15	85	1 15	14 00	13 00	10 00	8½
Warrenton	51	30	27	25	22	18	13	13	13	9	8	18	17½	7	22	19	8	1 20	90	1 20	14 00	13 00	10 00	9
Mayfield	60	33	30	27	24	19	14	14	14	9	8½	19	18	7¼	24	21	9	1 30	95	1 30	14 50	14 00	11 00	10
Culverton	67	35	32	28	25	20	15	15	15	9½	9	20	19	7⅔	25	22	9	1 35	1 00	1 35	15 50	15 00	11 00	10
†Wilsons	69	36	33	29	26	20	15	15	15	9½	9	20	19	7⅔	26	22	9	1 40	1 00	1 40	16 00	15 00	11 00	11
Sparta	71	36	33	29	26	20	15	15	15	9½	9	20	19	7⅔	26	22	9	1 40	1 00	1 40	16 00	15 00	11 00	11
Devereux	79	39	36	31	28	21	16	16	16	10	9½	21	20⅔	7⅔	28	23	9½	1 50	1 10	1 50	17 00	16 00	12 00	12
Carrs	83	41	37	32	29	22	17	17	17	11	10	22	21⅔	7⅔	29	24	9½	1 55	1 15	1 55	17 50	17 00	13 00	12
Milledgeville	93	44	39	34	30	23	18	18	18	11½	11	23	23	8	30	25	10	1 65	1 20	1 65	19 00	17 00	14 00	14
Browns	101	48	42	37	31	24	19	19	19	11½	11	24	23	8⅓	31	26	10	1 80	1 25	1 80	21 00	18 00	14 00	15
Haddocks	106	48	42	37	31	24	19	19	19	11½	11	24	23	8⅓	31	26	10	1 80	1 25	1 80	21 00	18 00	14 00	15
James	111	51	44	39	32	25	20	20	20	12	11½	25	24	8⅓	32	27	10½	1 90	1 30	1 90	23 00	18 00	15 00	16
†Roberts	116	51	44	39	32	25	20	20	20	12	11½	25	24	8⅓	32	27	10½	1 90	1 30	1 90	23 00	18 00	15 00	16
Macon	125	54	46	40	33	26	20	20	20	12½	12	25	25	8¾	33	28	10½	2 00	1 35	2 00	24 00	19 00	16 00	17
Norwood	50	30	27	25	22	18	13	13	13	9	8	18	17½	7	22	19	8	1 20	90	1 20	14 00	13 00	10 00	9
Barnett	58	33	30	27	24	19	14	14	14	9	8½	19	18	7¼	24	21	9	1 30	95	1 30	14 50	14 00	11 00	10
Sharon	62	33	30	27	24	19	14	14	14	9	8½	19	18	7¼	24	21	9	1 30	95	1 30	14 50	14 00	11 00	10
†Ficklin	68	36	33	29	26	20	15	15	15	9½	9	20	19	7½	26	22	9	1 40	1 00	1 40	16 00	15 00	11 00	11
Washington	76	38	35	30	27	21	16	16	16	10	9½	21	20	7½	27	23	9½	1 45	1 05	1 45	16 50	16 00	12 00	11
Crawfordville	64	35	32	28	25	21	15	15	15	9½	9	20	19	7½	25	22	9	1 35	1 00	1 35	15 50	15 00	11 00	10
†Robinson's	70	36	33	29	26	21	15	15	15	9½	9	20	19	7½	26	22	9	1 40	1 00	1 40	16 00	15 00	11 00	11
Union Point	76	38	35	30	27	21	16	16	16	10	9½	21	20	7½	27	23	9½	1 45	1 05	1 45	16 50	16 00	12 00	11
Woodville	81	39	36	31	28	21	16	16	16	10	9½	21	20½	7½	28	23	9½	1 50	1 10	1 50	17 00	16 00	12 00	12
Bairdstown	83	41	37	32	29	22	17	17	17	11	10	22	21½	7½	29	24	9½	1 55	1 15	1 55	17 50	17 00	13 00	12
Maxeys	89	42	38	33	29	22	17	17	17	11	10	22	21½	8	29	24	9½	1 60	1 15	1 60	18 00	17 00	13 00	13
Antioch	92	42	38	33	29	22	17	17	17	11	10	22	21½	8	29	24	9½	1 60	1 15	1 60	18 00	17 00	13 00	13
Crawford (A. Br.)	98	45	40	35	30	23	18	18	18	11½	11	23	23	8⅓	30	25	10	1 70	1 20	1 70	20 00	17 00	14 00	14
Dunlap	106	48	42	37	31	24	19	19	19	11½	11	24	23	8½	31	26	10	1 80	1 25	1 80	21 00	18 00	14 00	15
Winterville	108	48	42	37	31	24	19	19	19	11½	11	24	23	8½	31	26	10	1 80	1 25	1 80	21 00	18 00	14 00	15
Athens	115	50	44	39	32	25	20	20	20	12	11½	25	24	8½	32	27	10½	1 90	1 30	1 90	23 00	18 00	15 00	16
Greensboro	83	41	37	32	29	22	17	17	17	11	10	22	21½	7½	29	24	9½	1 55	1 15	1 55	17 50	17 00	13 00	12
Carey	90	42	38	33	29	22	17	17	17	11	10	22	21½	8	29	24	9½	1 60	1 15	1 60	18 00	17 00	13 00	13
†Blue Springs	92	42	38	33	29	22	17	17	17	11	10	22	21½	8	29	24	9½	1 60	1 15	1 60	18 00	17 00	13 00	13
Buckhead	96	44	39	34	30	23	18	18	18	11½	11	23	23	8	30	25	10	1 65	1 20	1 65	19 00	17 00	14 00	14
Madison	103	48	42	37	31	24	19	19	19	11½	11	24	23	8½	31	26	10	1 80	1 25	1 80	21 00	18 00	14 00	15
†Dorsey	107	48	42	37	31	24	19	19	19	11½	11	24	23	8½	31	26	10	1 80	1 25	1 80	21 00	18 00	14 00	15
Rutledge	112	51	44	39	32	25	20	20	20	12	11½	25	24	8½	32	27	10½	1 90	1 30	1 90	23 00	18 00	15 00	16
Social Circle	119	51	44	39	32	25	20	20	20	12	11½	25	24	8½	32	27	10½	1 90	1 30	1 90	23 00	18 00	15 00	16
†Alcovy	125	54	46	41	33	26	21	21	21	12½	12	26	25	8⅔	33	28	10½	2 00	1 35	2 00	24 00	19 00	16 00	17
Covington	130	54	46	41	33	26	21	21	21	12½	12	26	25	8⅔	33	28	10½	2 00	1 35	2 00	24 00	19 00	16 00	17
Almon	133	57	48	43	34	27	22	22	22	13	12½	27	26½	9	34	29	11	2 10	1 40	2 10	25 00	19 00	16 00	18
Conyers	140	57	48	43	34	27	22	22	22	13	12½	27	26½	9	34	29	11	2 10	1 40	2 10	25 00	19 00	16 00	18
Lithonia	146	60	50	45	35	28	23	23	23	14	13	28	27½	9	35	30	11	2 20	1 50	2 20	26 00	20 00	17 00	18
†Redan	150	60	50	45	35	28	23	23	23	14	13	28	27½	9	35	30	11	2 20	1 50	2 20	26 00	20 00	17 00	18
Stone Mount	155	62	52	46	36	29	24	24	24	14½	13	29	28½	9¼	36	31	12	2 25	1 60	2 25	27 00	20 00	17 00	19
Clarkston	160	62	52	46	36	29	24	24	24	14½	13	29	28½	9¼	36	31	12	2 25	1 60	2 25	27 00	20 00	17 00	19
Decatur	165	64	54	47	37	30	25	25	25	15½	14½	30	31	9¼	37	32	12	2 30	1 70	2 30	28 00	21 00	18 00	19
Atlanta	171	64	54	47	37	30	25	25	25	15½	14½	30	31	9½	37	32	12	2 35	1 80	2 35	29 00	21 00	18 00	20

For all distances over five miles and under one hundred miles, the following rule will apply: When the mileage does not end in 0 or 5, the nearest mileage so ending shall govern the rate.

ILLUSTRATION: For a distance of 27 miles charge for 25 miles; for a distance of 28 miles charge for 30 miles.

When freight is transported any distance greater than one hundred miles, if the mileage does not end in 0, the next ten-mile group *above* shall govern the rate.

ILLUSTRATION: For 121 miles charge for 130.

† No Agent. Freight must be prepaid. Freight sent by Passenger Trains will be charged one and *one-half first-class rate*, and must be prepaid in every instance.

(EXHIBIT No. 2 TO J. W. GREEN'S DEPOSITION.)

LOCAL FREIGHT TARIFF No. 15, GEORGIA RAILROAD COMPANY.

TAKING EFFECT JANUARY 1, 1891.

FROM ATLANTA TO—	Distances.	PER ONE HUNDRED POUNDS. First Class.	Second Class.	Third Class.	Fourth Class.	Fifth Class.	Sixth Class.	A	B	C	D	E	Bbl. F	PER 100 POUNDS. G	H	J	K	Per ton per car-load. K	L	M	Per C. L. of 20,000 lbs. N	O	Per C.L. P	100 lbs. R
	Miles.	1	2	3	4	5	6	Bacon, packed, in any quant'y; bk. meats, C. L. Owner's risk of spoiling.	Flour, in sacks.	Grain, in any quantity; hay, C. L.		Ale and beer, in wood, C. L. Owner's risk of leakage & fermentati'n.	Flour, grits, and hominy, in bbls.	Cotton seed, C. L. Cotton-seed hulls, C. L.	Whiskey, in wood; value limited to 75 cts. per gallon.	Cotton.	Fertilizers, L. C. L.	Fertilizers, C. L.	Coal, coke, ice, etc.	Iron—pig, scrap, railroad, etc.	Live stock, etc.	Salt, jug ware, etc.	Clay, brick, wood, bran, etc., C. L., 25,000 lbs.; lumber, 24,000 lbs.	Spirits turpentine, etc., in bbls.; rags, pressed in bales, any quantity.
		Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts	Cts.	$ cts.	$ cts.	$ cts.	$ cts.	$ cts.	$ cts.	$ cts.
Decatur	6	12	11	10	8	7	6	6	6	4½	4	7	9	2½	8	8	4	55	35	55	5 00	5 50	4 00	4
Clarkston	11	16	14	13	10	9	8	8	8	5½	5	9	11	3½	10	10	5	80	50	80	6 50	8 00	5 00	5
Stone Mount	16	18	16	15	12	11	9	9	9	6	5½	11	12½	3½	12	12	5½	85	55	85	7 50	9 00	6 00	5½
†Redan	21	20	18	16	14	12	10	10	10	7	6	12	14	5	14	13	6	90	60	90	8 00	10 00	7 00	6
Lithonia	25	22	20	18	16	13	11	11	11	7½	7	13	15	5½	16	14	6½	95	65	95	9 00	11 00	8 00	6½
Conyers	31	24	21	19	17	14	11	11	11	7½	7	14	15	6	17	15	7	1 00	70	1 00	10 00	11 00	8 00	7
Almon	38	27	24	22	20	16	12	12	12	8	7½	16	16	6½	20	17	8	1 10	80	1 10	13 00	12 00	9 00	8
Covington	41	27	24	22	20	16	12	12	12	8	7½	16	16	6½	20	17	8	1 10	80	1 10	13 00	12 00	9 00	8
†Alcovy	46	29	26	24	21	17	13	13	13	9	8	17	17½	6¾	21	18	8	1 15	85	1 15	14 00	13 00	10 00	8½
Social Circle	52	30	27	25	22	18	13	13	13	9	8	18	17½	7	22	19	8	1 20	90	1 20	14 00	13 00	10 00	9
Rutledge	59	33	30	27	24	19	14	14	14	9	8½	19	18	7½	24	21	9	1 30	95	1 30	14 50	14 00	11 00	10
†Dorsey	64	35	32	28	25	20	15	15	15	9½	9	20	19	7½	25	22	9	1 35	1 00	1 35	15 50	15 00	11 00	10
Madison	68	36	33	29	26	20	15	15	15	9½	9	20	19	7½	26	22	9	1 40	1 00	1 40	16 00	15 00	11 00	11
Buckhead	75	38	35	30	27	21	16	16	16	10	9½	21	20	7½	27	23	9½	1 45	1 05	1 45	16 50	16 00	12 00	11
†Blue Springs	79	39	36	31	28	21	16	16	16	10	9½	21	20½	7½	28	23	9½	1 50	1 10	1 50	17 00	16 00	12 00	12
Carey	81	39	36	31	28	21	16	16	16	10	9½	21	20½	7½	28	23	9½	1 50	1 10	1 58	17 00	16 00	12 00	12
Greensboro	88	42	38	33	29	22	17	17	17	11	10	22	21½	8	29	24	9½	1 60	1 15	1 60	18 00	17 00	13 00	13
Union Point	95	44	39	34	30	23	18	18	18	11½	11	23	23	8	30	25	10	1 65	1 20	1 65	19 00	17 00	14 00	14
Woodville	100	45	40	35	30	23	18	18	18	11½	11	23	23	8½	30	25	10	1 70	1 20	1 70	20 00	17 00	14 00	14
Bairdstown	102	48	42	37	31	24	19	19	19	11½	11	24	23	8½	31	26	10	1 80	1 25	1 80	21 00	18 00	14 00	15
Maxeys	108	48	42	37	31	24	19	19	19	11½	11	24	23	8½	31	26	10	1 80	1 25	1 80	21 00	18 00	14 00	15
Antioch	111	51	44	39	32	25	20	20	20	12	11½	25	24	8½	32	27	10½	1 90	1 30	1 90	23 00	18 00	15 00	16
Crawford (A. Br.)	117	51	44	39	32	25	20	20	20	12	11½	25	24	8½	32	27	10½	1 90	1 30	1 90	23 00	18 00	15 00	16
Dunlap	125	54	46	41	33	26	21	21	21	12½	12	26	25	8¾	33	28	10½	2 00	1 35	2 00	24 00	19 00	16 00	17
Winterville	127	54	46	41	33	26	21	21	21	12½	12	26	25	8¾	33	28	10½	2 00	1 35	2 00	24 00	19 00	16 00	17
Athens	134	53	46	41	34	26	21	21	21	11½	11	26	23	9	34	26	11	1 98	1 38	1 98	23 10	19 00	14 00	16½
†Robinson's	101	48	42	37	31	24	19	19	19	11½	11	24	23	8½	31	26	10	1 80	1 25	1 80	21 00	18 00	14 00	15
Crawfordville	107	48	42	37	31	24	19	19	19	11½	11	24	23	8½	31	26	10	1 80	1 25	1 80	21 00	18 00	14 00	15
Barnett	113	51	44	39	32	25	20	20	20	12	11½	25	24	8½	32	27	10½	1 90	1 30	1 90	23 00	18 00	15 00	16
Sharon	117	51	44	39	32	25	20	20	20	12	11½	25	24	8½	32	27	10½	1 90	1 30	1 90	23 00	18 00	15 00	16
†Ficklin	123	54	46	41	33	26	21	21	21	12½	12	26	25	8¾	33	28	10½	2 00	1 35	2 00	24 00	19 00	16 00	17
Washington	131	57	48	43	34	27	22	22	22	13	12½	27	26½	9	34	29	11	2 10	1 40	2 10	25 00	19 00	16 00	18
Norwood	121	54	46	41	33	26	21	21	21	12½	12	26	25	8¾	33	28	10½	2 00	1 35	2 00	24 00	19 00	16 00	17
Camak	124	54	46	41	33	26	21	21	21	12½	12	26	25	8¾	33	28	10½	2 00	1 35	2 00	24 00	19 00	16 00	17
Warrenton	128	54	46	41	33	26	21	21	21	12½	12	26	25	8¾	33	28	10½	2 00	1 35	2 00	24 00	19 00	16 00	17
Mayfield	137	57	48	43	34	27	22	22	22	13	12½	27	26½	9	34	29	11	2 10	1 40	2 10	25 00	19 00	16 00	18
Culverton	144	60	50	45	35	28	23	23	23	14	13	28	27½	9	35	30	11	2 20	1 50	2 20	26 00	20 00	17 00	18
†Wilsons	146	60	50	45	35	28	23	23	23	14	13	28	27½	9	35	30	11	2 20	1 50	2 20	26 00	20 00	17 00	18
Sparta	148	60	50	45	35	28	23	23	23	14	13	28	27½	9	35	30	11	2 20	1 50	2 20	26 00	20 00	17 00	18
Devereux	156	62	52	46	36	29	24	24	24	14½	13	29	28½	9½	36	31	12	2 25	1 60	2 25	27 00	20 00	17 00	19
Carrs	160	62	52	46	36	29	24	24	24	14½	13	29	28½	9½	36	31	12	2 25	1 60	2 25	27 00	20 00	17 00	19
Milledgeville	170	64	54	47	37	30	25	25	25	15½	14½	30	31	9¾	37	32	12	2 30	1 70	2 30	28 00	21 00	18 00	19
Browns	178	66	56	48	38	31	26	26	26	15½	14½	31	31	9½	38	33	12	2 35	1 80	2 35	29 00	21 00	19 00	20
Haddocks	183	68	58	49	39	32	27	27	27	16½	15½	32	33	9½	39	34	13	2 40	1 90	2 40	29 50	22 00	19 00	20
James	188	68	58	49	39	32	27	27	27	16½	15½	32	33	9¾	39	34	13	2 40	1 90	2 40	29 50	22 00	19 00	20
†Roberts	193	70	60	50	40	32	27	27	27	16½	15½	32	33	9¾	40	35	13	2 45	2 00	2 40	30 00	22 00	20 00	20
Macon	202	70	60	50	40	32	27	27	27	17	16	32	33½	9¾	40	36	13	2 50	2 10	2 50	31 00	23 00	20 00	21
Mesena	128	54	46	41	33	26	21	21	21	12½	12	26	25	8¾	33	28	10½	2 00	1 35	2 00	24 00	19 00	16 00	17
Thomson	134	57	48	43	34	27	22	22	22	13	12½	27	26	9	34	29	11	2 10	1 40	2 10	25 00	19 00	16 00	18
Bonesville	138	57	48	43	34	27	22	22	22	13	12½	27	26	9	34	29	11	2 10	1 40	2 10	25 00	19 00	16 00	18
Dearing	142	60	50	45	35	28	23	23	23	14	13	28	27½	9	35	30	11	2 20	1 50	2 20	26 00	20 00	17 00	18
Saw Dust	145	60	50	45	35	28	23	23	23	14	13	28	27½	9	35	30	11	2 20	1 50	2 20	26 00	20 00	17 00	18
Harlem	146	60	50	45	35	28	23	23	23	14	13	28	27½	9	35	30	11	2 20	1 50	2 20	26 00	20 00	17 00	18
Berzelia	150	60	50	45	35	28	23	23	23	14	13	28	27½	9	35	30	11	2 20	1 50	2 20	26 00	20 00	17 00	18
†Forest	155	62	52	46	36	29	24	24	24	14½	13	29	28½	9½	36	31	12	2 25	1 60	2 25	27 00	20 00	17 00	19
Grovetown	156	62	52	46	36	29	24	24	24	14½	13	29	28½	9½	36	31	12	2 25	1 60	2 25	27 00	20 00	17 00	19
Belair	161	64	54	47	37	30	25	25	25	15½	14½	30	31	9¾	37	32	12	2 30	1 70	2 30	28 00	21 00	18 00	19
†Wheless	166	64	54	47	37	30	25	25	25	15½	14½	30	31	9¾	37	32	12	2 30	1 70	2 30	28 00	21 00	18 00	19
Augusta	171	64	54	47	37	30	25	25	25	15½	14½	30	31	9¾	37	32	12	2 35	1 80	2 35	29 00	21 00	18 00	20

For all distances over five miles and under one hundred miles, the following rule will apply: When the mileage does not end in 0 or 5, the nearest mileage so ending shall govern the rate.

ILLUSTRATION: For a distance of 27 miles charge for 25 miles; for a distance of 28 miles charge for 30 miles.

When freight is transported any distance greater than one hundred miles, if the mileage does not end in 0, the next ten-mile group *above* shall govern the rate.

ILLUSTRATION: For 121 miles charge for 130.

† No Agent. Freight must be prepaid. Freight sent by Passenger Trains will be charged one and *one-half first-class rate*, and must be prepaid in every instance.

MAP

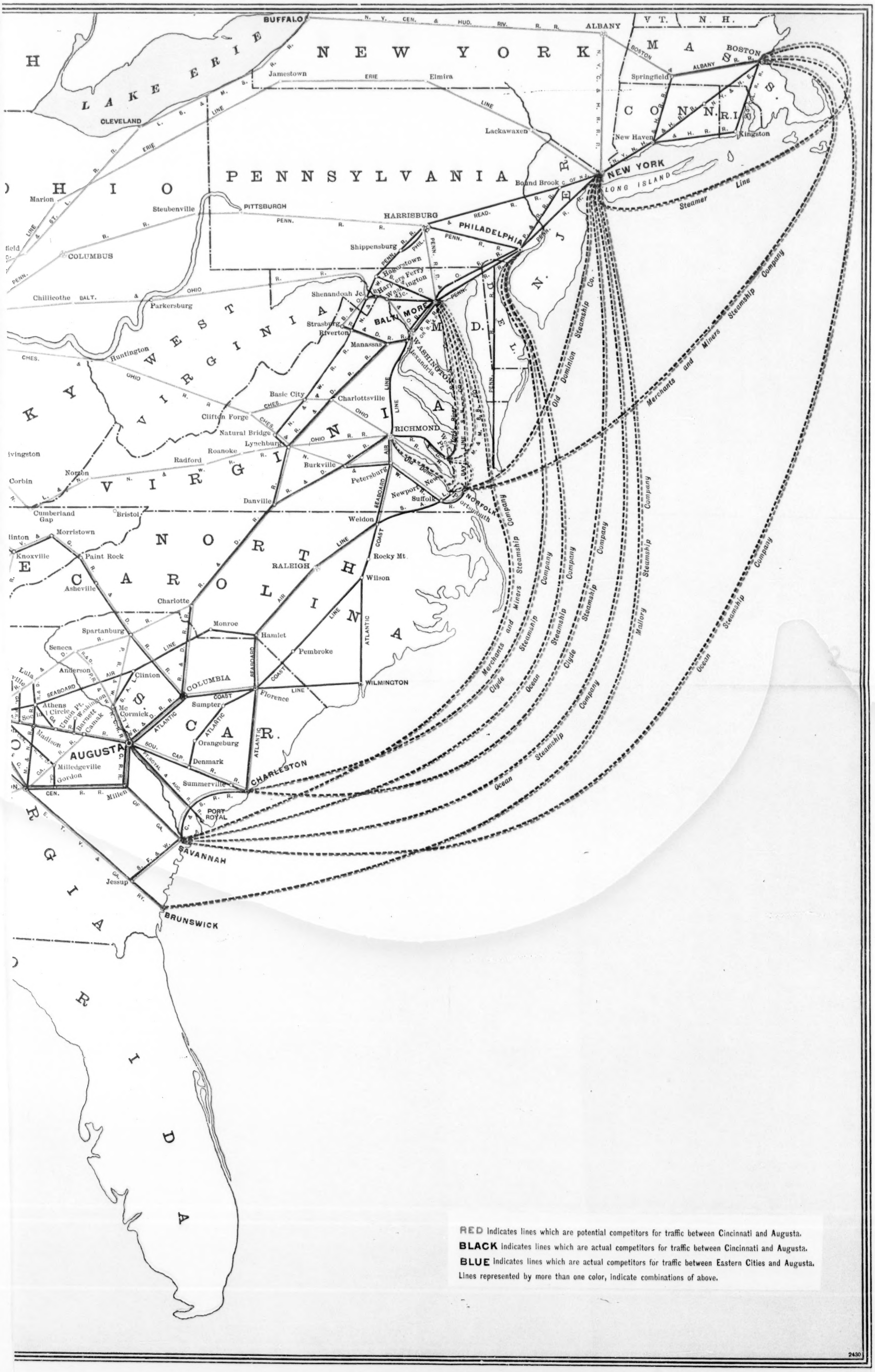
OF THE

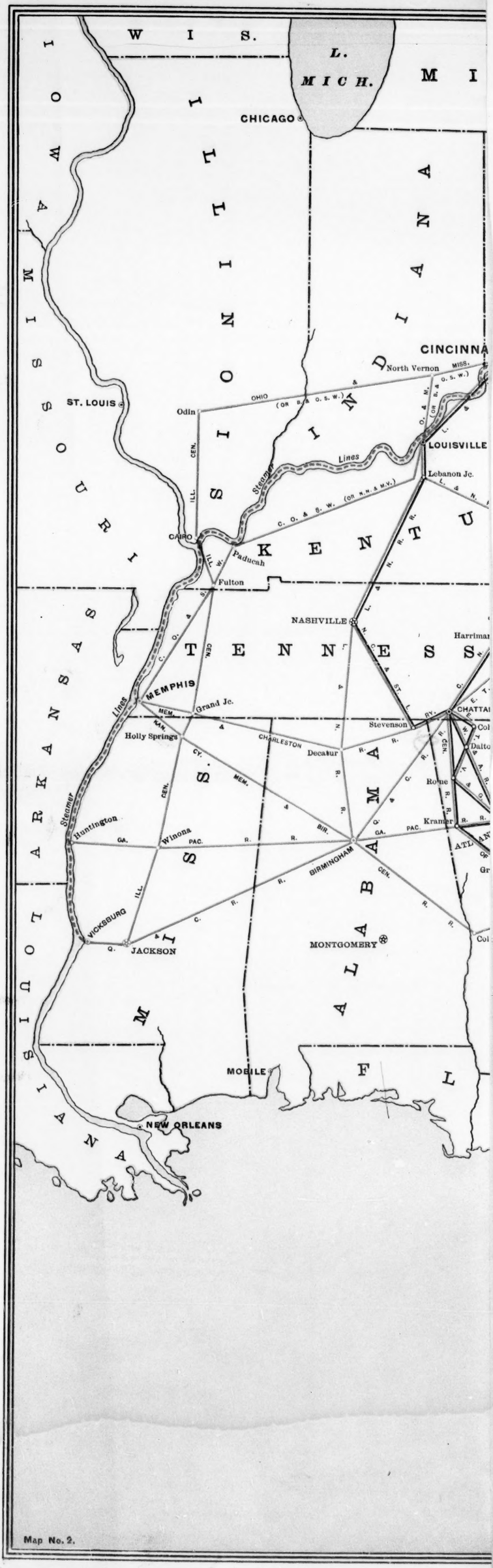
QUEEN & CRESCENT ROUTE

AND

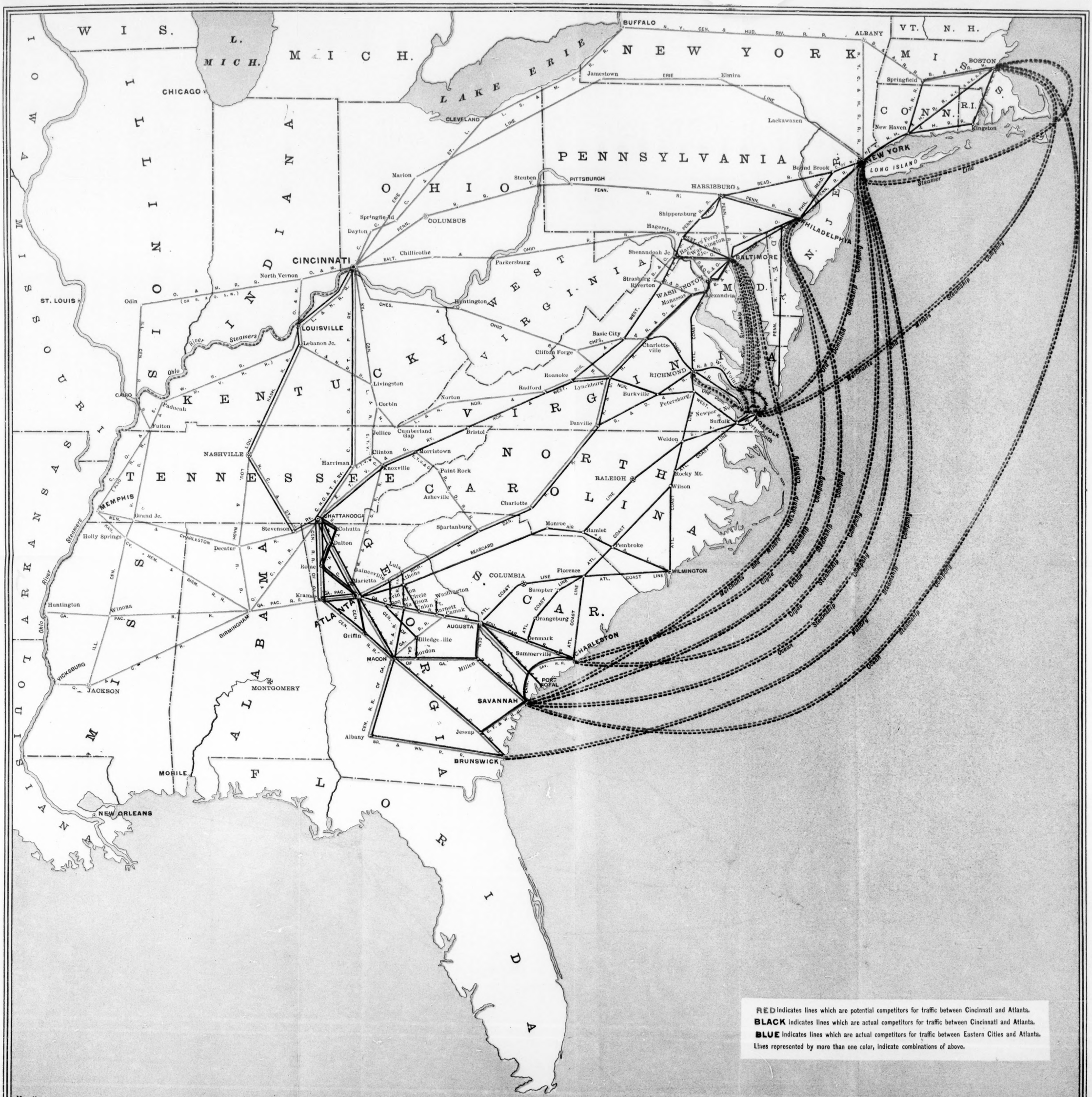
EAST TENNESSEE, VIRGINIA & GEORGIA RAILWAY

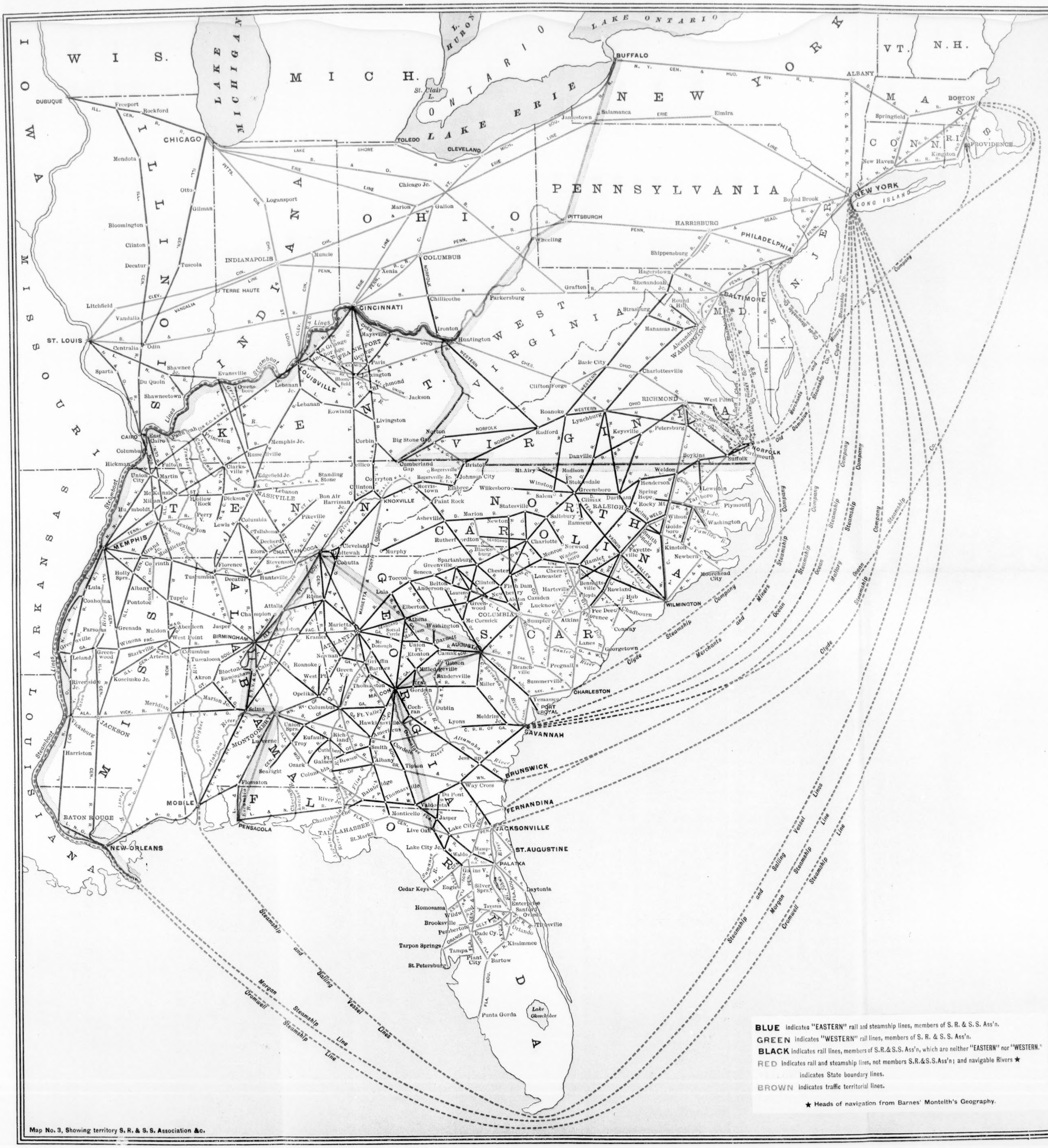
SYSTEMS


BUFFALO
N. Y. CEN. & HUD. RIV. R. R.
ALBANY
V T.
N H.
M A
BOSTON
BOSTON & ALBANY R. R.
Springfield
C O N N.
R.I
New Haven
Kingston
N E W Y O R K
Jamestown
ERIE
Elmira
LAKE ERIE
CLEVELAND
L. S. & M. S. R. R.
LINE
Lackawaxen
P E N N S Y L V A N I A R. R.
NEW YORK
LONG ISLAND
Steamer
Line
Bound Brook
H O
Marion
Steubenville
PITTSBURGH
PENN. R. R.
HARRISBURG
READ. & PHILADELPHIA
PENN. R. R.
Shippensburg
COLUMBUS
Hagerstown
Ferry
Washington
Shenandoah Jc.
Chillicothe
BALT. & OHIO
Parkersburg
BALTIMORE
M D.
DEL.
N. J.
Old Dominion Steamship Co.
Merchants and Miners Steamship Company
Strasburg
Riverton
Manassas
WASHINGTON
Alexandria
Huntington
CHES. & OHIO R. R.
Basic City
Charlottesville
Clifton Forge
Natural Bridge
Lynchburg
RICHMOND
Roanoke
Radford
Burkville
Petersburg
Norton
Corbin
Newport
Suffolk
NORFOLK
Portsmouth
Danville
Cumberland Gap
Bristol
Weldon
Morristown
Knoxville
Paint Rock
RALEIGH
Rocky Mt.
Wilson
Asheville
Charlotte
Monroe
Hamlet
Pembroke
Spartanburg
Seneca
Anderson
Clinton
COLUMBIA
Sumpter
Florence
WILMINGTON
Athens
Union Pt.
Washington
Barnett
Camak
Mc Cormick
Orangeburg
Madison
AUGUSTA
Milledgeville
Gordon
Denmark
CHARLESTON
Summerville
PORT ROYAL
SAVANNAH
Jessup
BRUNSWICK
Merchants and Miners Steamship Company
Clyde Steamship Company
Ocean Steamship Company
Mallory Steamship Company
RED Indicates lines which are potential competitors for traffic between Cincinnati and Augusta.
BLACK Indicates lines which are actual competitors for traffic between Cincinnati and Augusta.
BLUE Indicates lines which are actual competitors for traffic between Eastern Cities and Augusta.
Lines represented by more than one color, indicate combinations of above.
2430


W I S.
L.
MICH.
M I
CHICAGO
I L L I N O I S
I N D I A N A
CINCINNA
North Vernon
MISS.
O. S. W.)
OHIO
(OR B. & O. S. W.)
O. & M.
(OR B. & O. S. W.)
ST. LOUIS
Odin
CEN.
ILL.
Steamer
Lines
LOUISVILLE
Lebanon Jc.
L. & N.
C. O. & S. W. (OR N. N. & M. V.)
CAIRO
ILL. W.
Paducah
Fulton
K E N T U
N. R. R.
M I S S O U R I
NASHVILLE
Harriman
T E N N E S S
C. O. & S.
CEN.
MEMPHIS
Lines
Grand Jc.
MEM. & CHAR.
CY.
CHARLESTON
Decatur
Stevenson
CHATTA
Col
Dalto
Rome
Kramer
ATL
Gr
Steamer
Huntington
Winona
GA. PAC.
BIR.
VICKSBURG
JACKSON
MONTGOMERY
BIRMINGHAM
CEN.
A L A B A M A
M I S S I S S I P P I
MOBILE
F L
NEW ORLEANS
A N A

Map No. 2.


BUFFALO
N. Y. CEN. & HUD. RIV. R. R.
ALBANY
VT.
N. H.
BOSTON
Springfield
B. & A. R. R.
CONN.
R.I.
New Haven
Kingston
N. Y. C. & H. R. R. R.
NEW YORK
LONG ISLAND
Steamer Line
Bound Brook
Lackawaxen
Jamestown
ERIE
Elmira
LINE
CLEVELAND
L. S. & M. S. R. R.
LAKE ERIE
CHICAGO
MICH.
L. MICH.
WIS.
ILLINOIS
INDIANA
OHIO
PENNSYLVANIA
NEW JERSEY
Marion
Stenben V.
PITTSBURGH
FENN. R. R.
HARRISBURG
READ. R.
PENN. R. R.
PHILADELPHIA
Springfield
COLUMBUS
Dayton
C. C. C. & I. R. R.
Shippensburg
Hagerstown
Chillicothe
BALT. & O. R. R.
CINCINNATI
Parkersburg
Shenandoah Jc.
Harpers Ferry
Winchester & Potomac
BALTIMORE
DEL.
MD.
North Vernon
O. & M. R. R.
Strasburg
Riverton
WASHINGTON
Manassas
Alexandria
ST. LOUIS
Odin
(O. R. & O. S. W.)
Huntington
CHES. & OHIO
LOUISVILLE
Lebanon Jc.
L. & N. R. R.
Basic City
CHES. & OHIO
Charlottsville
Clifton Forge
Livingston
Ohio River Steamers
CAIRO
Paducah
KENTUCKY
VIRGINIA
Roanoke
Lynchburg
Radford
Norton
Corbin
RICHMOND
Burkville
Petersburg
Newport News
Suffolk
NORFOLK
Portsmouth
Danville
Jellico
Cumberland Gap
Bristol
Weldon
NASHVILLE
Clinton
Morristown
Harriman
Knoxville
Paint Rock
Asheville
Rocky Mt.
Wilson
RALEIGH
NORTH CAROLINA
TENNESSEE
MEMPHIS
Steamers
Grand Jc.
CHATTANOOGA
Charlotte
Monroe
Hamlet
Pembroke
Stevenson
Colutta
Spartanburg
Holly Springs
Decatur
Dalton
Rome
Gainesville
Lula
Athens
Marietta
Florence
WILMINGTON
SOUTH CAROLINA
COLUMBIA
Sumpter
Orangeburg
Kramer
Washington
Carnak
AUGUSTA
Denmark
Huntington
Winona
Griffin
Hilledgeville
Gordon
Summerville
CHARLESTON
ATLANTA
MACON
Millen
Albany
Jessup
SAVANNAH
PORT ROYAL
VICKSBURG
JACKSON
MONTGOMERY
MOBILE
BRUNSWICK
NEW ORLEANS
MISSISSIPPI
ALABAMA
GEORGIA
FLORIDA
LOUISIANA
Merchants & Miners Transportation Company
Ocean Steamship Company of Savannah
Clyde Steamship Company
Old Dominion Steamship Company
Mallory Steamship Company
RED indicates lines which are potential competitors for traffic between Cincinnati and Atlanta.
BLACK indicates lines which are actual competitors for traffic between Cincinnati and Atlanta.
BLUE indicates lines which are actual competitors for traffic between Eastern Cities and Atlanta.
Lines represented by more than one color, indicate combinations of above.
Map No. 1.
2429



Map No. 3, Showing territory S. R. & S. S. Association &c.

2427

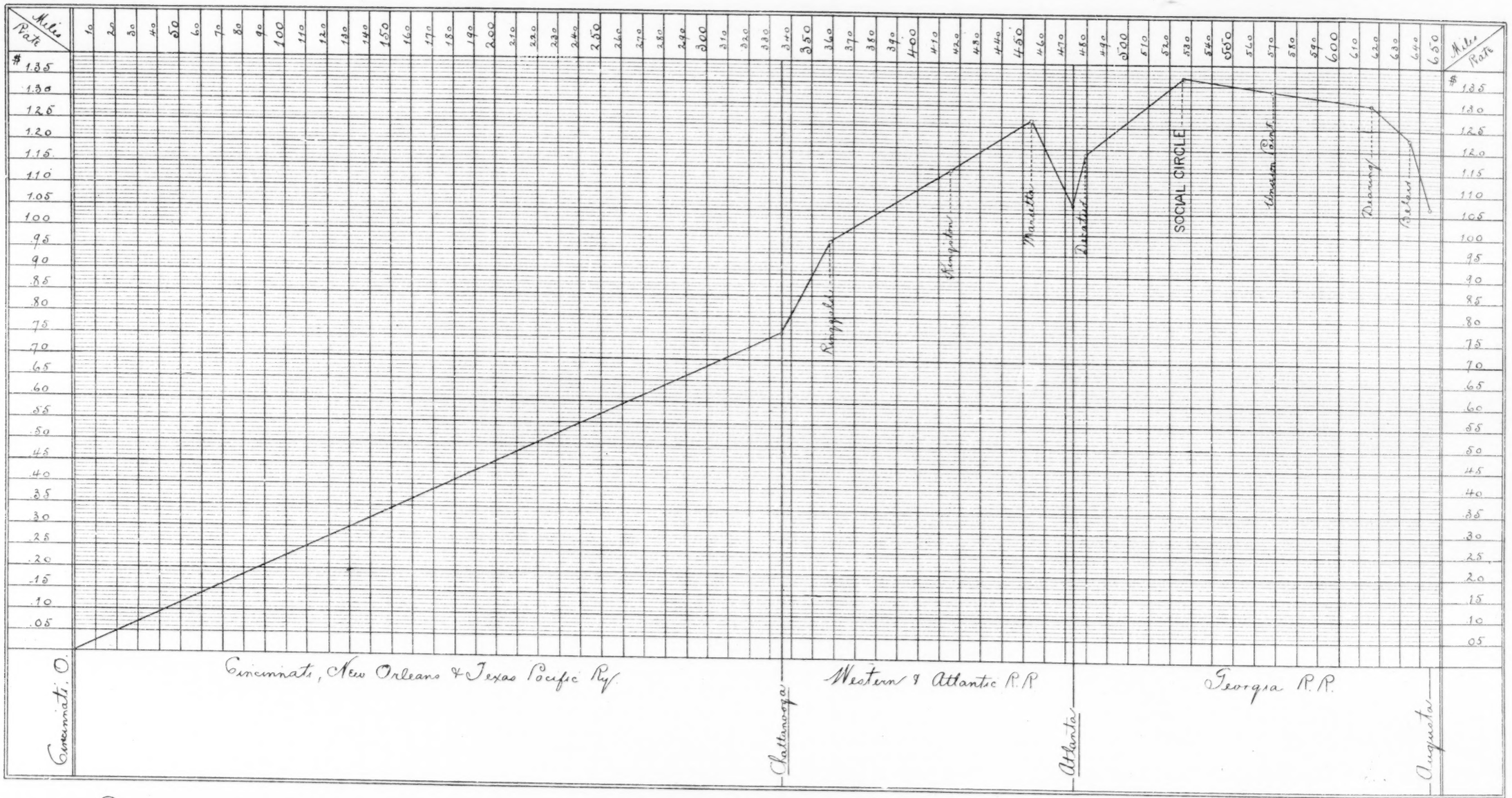


Diagram - showing Through Rate in cents per 100 lbs 1st Class. from Cincinnati, Ohio to certain stations on the Western & Atlantic and Georgia R.Rds

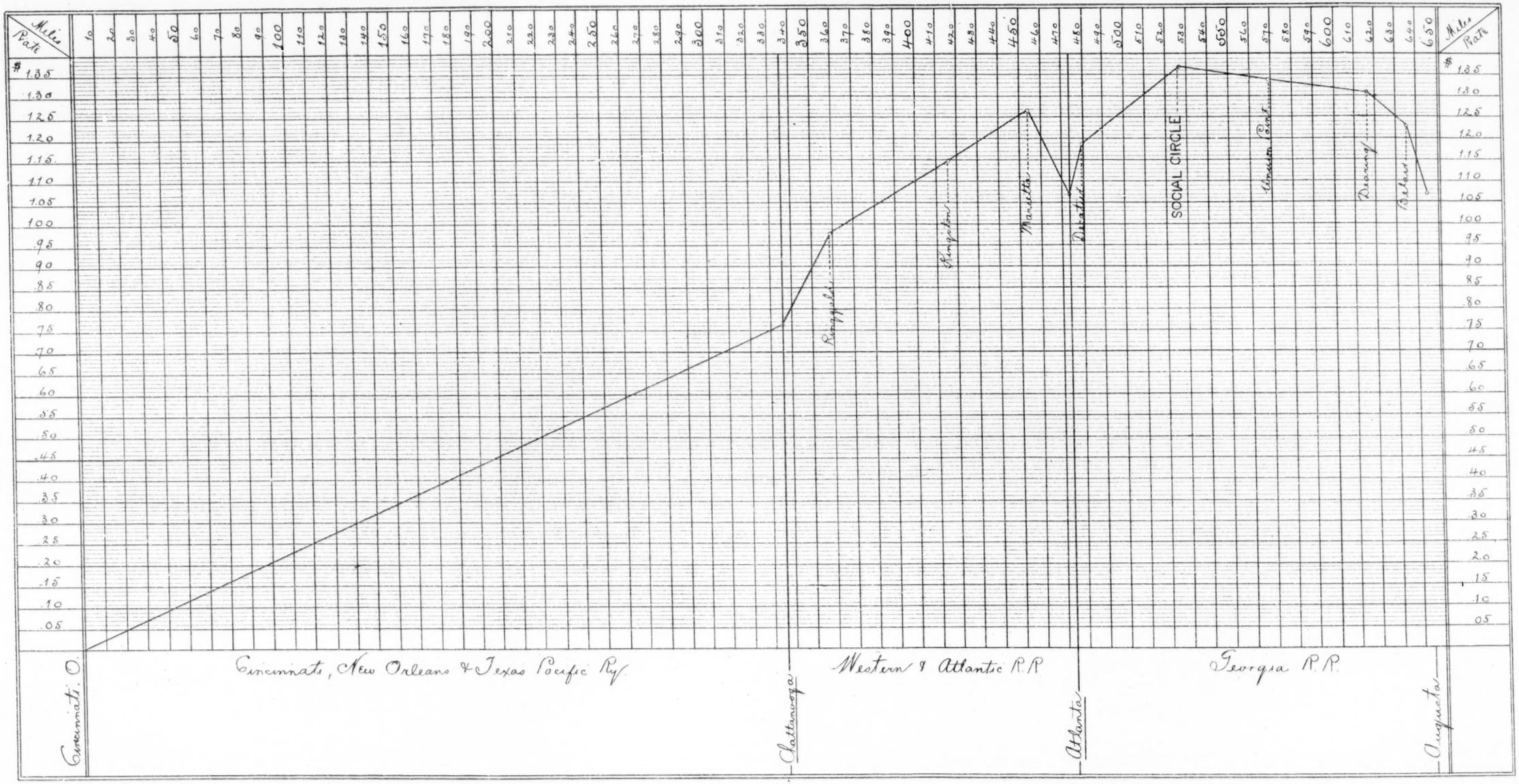
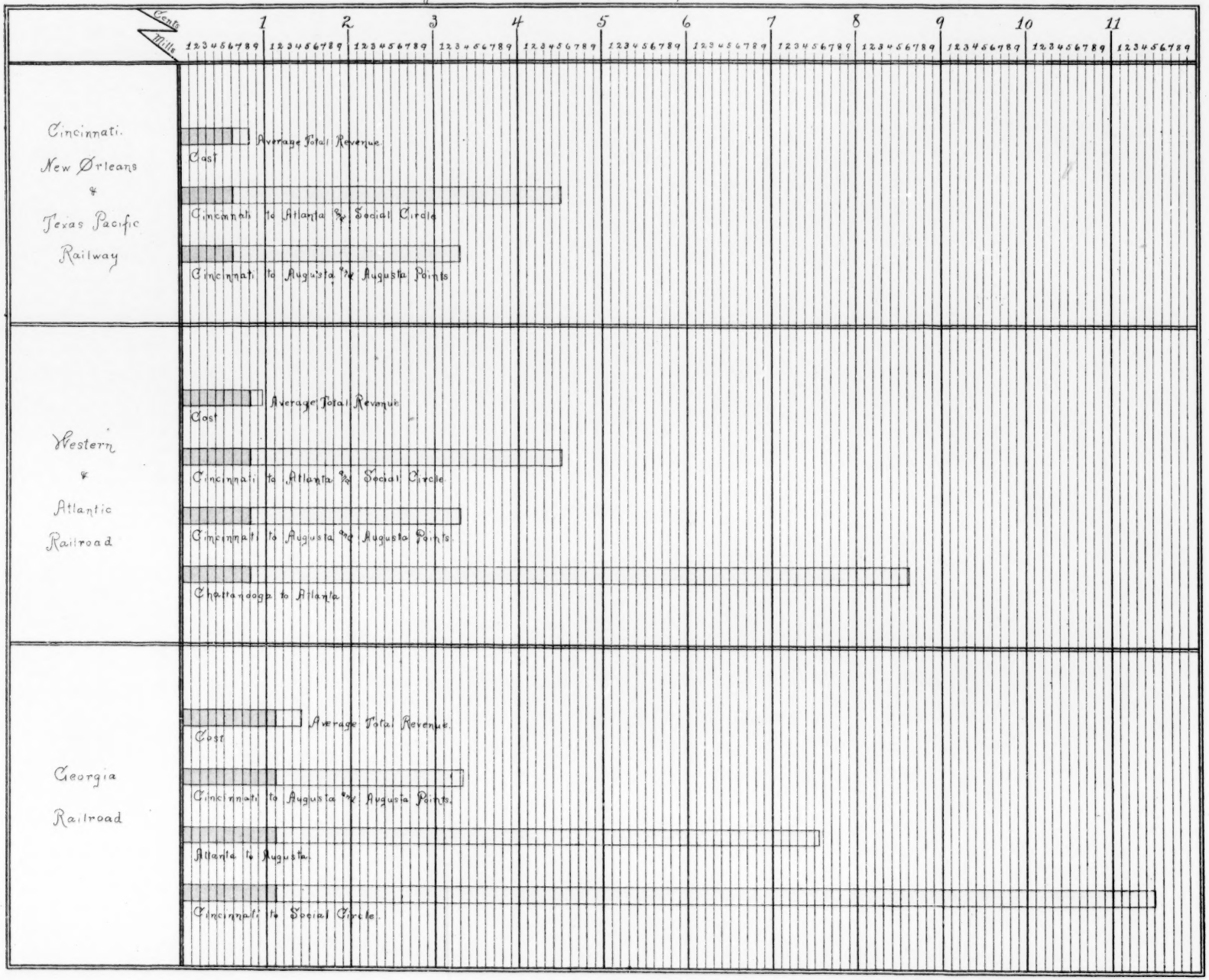
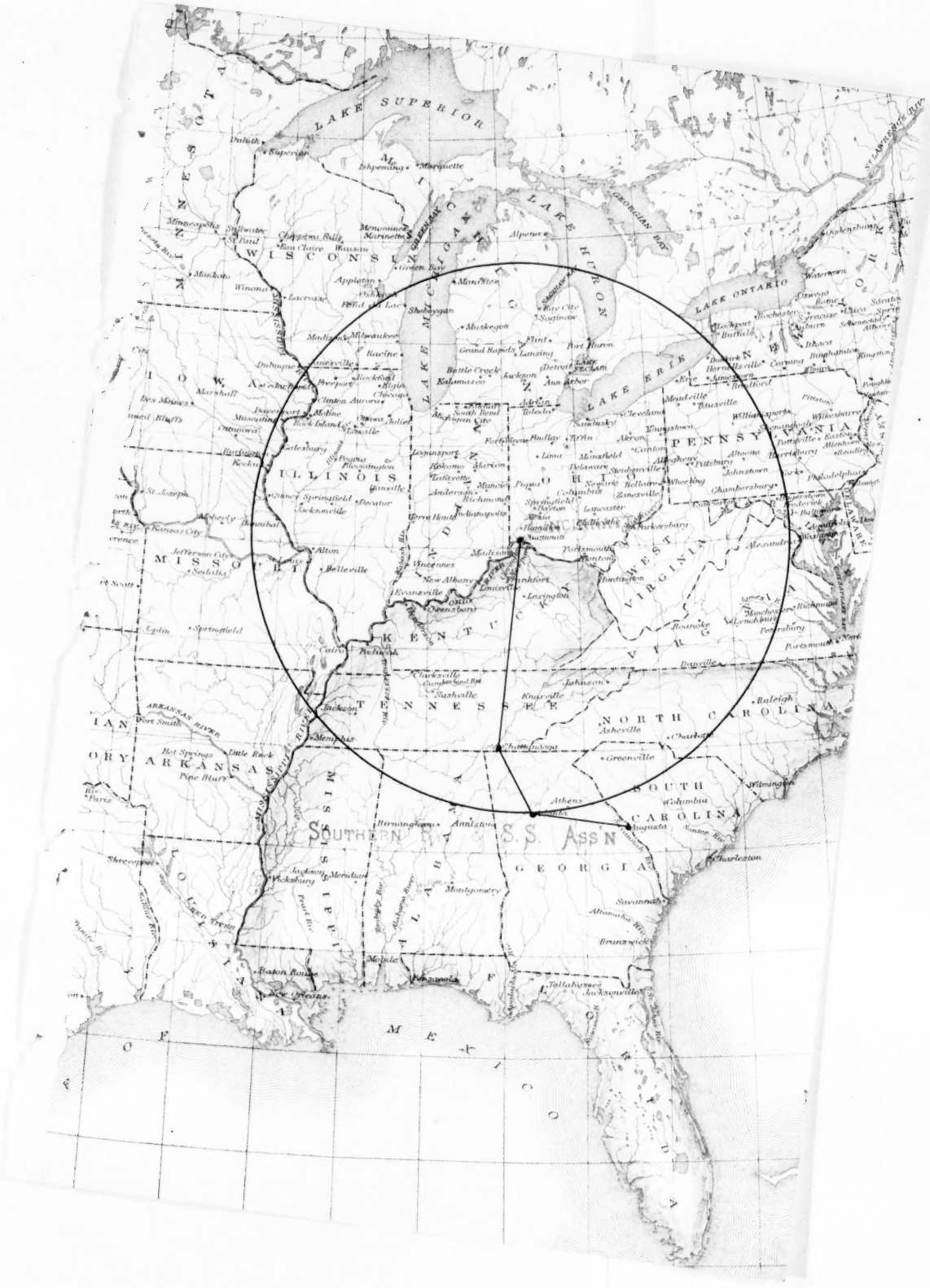


Diagram - showing Through Rate in cents per 100 lbs 1st Class, from Cincinnati, Ohio to certain stations on the Western & Atlantic and Georgia R.Rds

Diagram - showing charges on freight of the first class for each of the roads forming line from Cincinnati to Atlanta, Social Circle and Augusta; also Local charges of the roads and Average Total Revenue for freights of all classes, and the Cost of Movement.

Scale of 1 Cent per Ton per mile




LAKE SUPERIOR
LAKE MICHIGAN
LAKE HURON
LAKE ONTARIO
LAKE ERIE
WISCONSIN
ILLINOIS
MISSOURI
IOWA
KENTUCKY
TENNESSEE
MISSISSIPPI
ALABAMA
GEORGIA
SOUTH CAROLINA
NORTH CAROLINA
VIRGINIA
WEST VIRGINIA
PENNSYLVANIA
ARKANSAS
LOUISIANA
Duluth
Superior
Marquette
Milwaukee
Chicago
Detroit
Cleveland
Buffalo
Rochester
Toronto
Pittsburg
Philadelphia
Baltimore
Washington
Richmond
Norfolk
Louisville
Cincinnati
Columbus
Indianapolis
St. Louis
Kansas City
Memphis
Nashville
Knoxville
Atlanta
Charleston
Savannah
Wilmington
Raleigh
New Orleans
Mobile
Vicksburg
Montgomery
Birmingham
Charlotte
Asheville
Greenville
Augusta
Columbia
Little Rock
Fort Smith
Hot Springs
Pine Bluff
Shreveport
Jackson
Meridian
Tallahassee
Jacksonville
Savannah
Brunswick
Albany
Macon
Athens
Chattanooga
Johnson
Lexington
Frankfort
Louisville
Evansville
Terre Haute
Indianapolis
Fort Wayne
Toledo
Sandusky
Akron
Canton
Youngstown
Pittsburg
Wheeling
Parkersburg
Charleston
Huntington
Portsmouth
Zanesville
Columbus
Springfield
Dayton
Cincinnati
Lancaster
Chambersburg
Harrisburg
Philadelphia
Baltimore
Washington
Alexandria
Fredericksburg
Richmond
Petersburg
Norfolk
Portsmouth
Roanoke
Lynchburg
Danville
Greensboro
Salisbury
Charlotte
Asheville
Greenville
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